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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Report on the situation of human rights in the Democratic Republic of the Congo (former Zaire), submitted by the Special Rapporteur, Mr. Roberto Garretón, in accordance with Commission resolution 1997/58

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ACRONYMS

AFDL	Alliance of Democratic Forces for the Liberation of Congo-Zaire
ANC	Congolese National Army
ANR	National Information Agency (Agence nationale de renseignements)
APR	Rwandan Patriotic Army
AZADHO	Zairian Association for the Protection of Human Rights
CADDHOM	Collectif d'Action pour le Développement des Droits de l'Homme
CEDAW	Committee on the Elimination of Discrimination against Women
CHR	United Nations Commission on Human Rights
CNONGD	Conseil national des Organisations Non-Gouvernementales de Développement
CNS	National Sovereign Conference
DEMIAP	Detection of Unpatriotic Activities Police
DRC	Democratic Republic of the Congo
DSIR	Special Investigation and Information Department
DSP	Special Presidential Division
FAR	Rwandan Armed Forces
FAZ	Zairian Armed Forces
FONUS	Forces Novatrices pour l'Union et la Solidarité
HCR-PT	Supreme Council of the Republic - Transitional Parliament
ICPCR	International Covenant on Civil and Political Rights
MNC/L	Mouvement National Congolais/Lumumba
MPR	People's Movement for the Revolution
NGO(s)	Non-governmental organization(s)
OBMA	Improperly Acquired Property Office
PALU	Unified Lumumbist Party
PANADI	Party of Nationalists for Integral Development

ACRONYMS (continued)

PIR	Rapid Intervention Police
SARM	Military Action and Information Service
SNIP	National Intelligence and Protection Service (Service National d'Intelligence et de Protection)
UDHR	Universal Declaration of Human Rights
UDPS	Union for Democracy and Social Progress
UFERI	Union of Independent Federalists
UNHCR	United Nations High Commissioner for Refugees
VSV	The Voice of the Voiceless (Voix des Sans Voix)

NOTE

Whenever a date is given without a year, the year is assumed to be 1997.

"Zaire" or "Republic of Zaire" will be used to refer to the Government which governed the country until 17 May, and "Democratic Republic of the Congo" to refer to the Government which took power on that day.

I. INTRODUCTION

A. Mandate of the Special Rapporteur

1. Commission on Human Rights resolution 1994/87 made provision for the appointment of a Special Rapporteur to report on the situation of human rights in Zaire; his mandate was renewed by resolutions 1995/69, 1996/77 and 1997/58, after the Commission had considered his reports E/CN.4/1995/67, E/CN.4/1996/66 and E/CN.4/1997/6 and Add.1 and 2. The last-mentioned resolution also requested him to submit an interim report to the General Assembly (A/52/496). This is the final version and comprises information received up to 12 January 1998. For reasons of space, matters dealt with in the preliminary report have not been repeated here, only the necessary references being given. The report covers the various rights recognized in the international instruments and their situation throughout the country, not including violations of human rights and international humanitarian law dealt with by the joint mission established by Commission resolution 1997/58 on the proposal of the Rapporteur (see report A/52/496, paras. 2-7, and reports A/51/942 and E/CN.4/1998/64).

2. Since the joint mission was prevented from entering the Democratic Republic of the Congo, the Secretary-General of the United Nations established an investigation team on 15 July to investigate serious violations of human rights and international humanitarian law allegedly committed in the Democratic Republic of the Congo (former Zaire) since 1 March 1993. The team was to submit a report to the Secretary-General by late December 1997, this deadline being later extended to May 1998.

B. Activities of the Special Rapporteur

3. On 4 July, the Special Rapporteur asked the chargé d'affaires of the Ministry of Foreign Affairs of the Democratic Republic of the Congo to allow him to visit the country (from 4 to 16 August), as he had done in previous years. It was only on 4 September that the Government acknowledged receipt of the letter, without answering it. 1/

4. The Rapporteur held three rounds of consultations of 15 days, 5 days and 5 days respectively in Geneva. As to representatives of the Congolese Government, he was only able to interview Godefroid Marume Mulume, Counsellor in the Permanent Mission of Zaire - subsequently the Democratic Republic of the Congo, in Geneva on three occasions.

5. During his visit to Goma in March and when passing through Nairobi and Geneva, during his stay in Kigali as part of the joint mission, and during private visits to Montreal, Paris, New York and Washington, the Rapporteur received large quantities of written and oral information from family members and direct victims, exiles, NGO leaders, political parties, priests, other clergymen, journalists and lawyers. This information has been extremely useful to him in preparing this report. The reports of the Office of the High Commissioner for Human Rights in Kinshasa have also been important.

6. The Congolese human rights organizations whose public reports were consulted or whose senior officials were interviewed included: Zairian

Association for the Protection of Human Rights (AZADHO); Association des étudiants zaïrois de Strasbourg; Association nationale pour la défense des droits des migrants et ceux de la femme (ANADDEM-F); Association des cadres pénitentiaires; Collectif d'actions pour le développement des droits de l'homme (CADDHOM), Sud-Kivu; Collectif des associations féminines pour le développement; Palermo-Bukavu Solidarity Committee; Fédération des droits de l'homme (Lubumbashi); Comité pour la démocratie et les droits de l'homme (CDDH); Haki Za Binadamu, Maniema province; Conseil national des ONG pour le développement (CNONGD); Forum pour le développement du Nord-Kivu (FODENOK); Fraternité des prisons au Zaïre; Groupe Amos; Groupe Jérémias; Groupe Lotus, Kisangani; La Grande Vision; Ligue des droits de l'homme; Ligue des électeurs; Ligue pour la défense des droits de la personne dans la région des Grands Lacs (LDGL); Les amis de Nelson Mandela pour la défense des droits de l'homme; Mouvement des femmes pour la justice et la paix; International Society for Human Rights (ISHR), Zaire Section; Synergie Afrique; Toges noires; Voix des sans-voix pour les droits de l'homme; Action paysanne pour la reconstruction et le développement (APREDECI); Volontaires pour la paix. For the purposes of this report the Rapporteur also took into account interviews, reports and communiqués from the Union for Democracy and Social Progress (UDPS) and the Party of Nationalists for Integral Development (PANADI), as well as interviews, reports and testimony from highly reliable international organizations such as: International Law Group for Human Rights; International Federation of Human Rights Leagues; Human Rights Watch/Africa; Amnesty International; Action of Christians for the Abolition of Torture (ACAT); Association Rhône-Bas Zaïre (Congo); Association de solidarité internationale (ASI); Centre d'information, de recherche et de solidarité avec le Congo (COZI); CIMADE, Service oecuménique d'entraide; Comité d'échanges Isère-Kivu; Comité de jumelage de Villefontaine (Isère); Frères des hommes; Groupe de recherche et d'échanges technologiques (GRET); Ingénieurs d'agriculture sans frontières (AIDASF); Avocats sans frontières; Médias libres, Médias pour tous; Ingénieurs sans frontières (ISF); Médecins du Monde; Survie; Terres des Hommes/France; Agir ensemble pour les droits de l'homme; Union des associations spécialisées dans la matière électorale; Info-CIAM, etc.

7. The Rapporteur has taken particular account of a report on the situation in Kivu, prepared by a commission appointed by the Evangelical Lutheran Church, chaired by Bishop Kasukuti Ngoy and comprising other eminent persons; this was possible with the support of the authorities of the Alliance of Democratic Forces for the Liberation of Congo-Zaire (AFDL), as is expressly stated. 2/ However, this commission said that it had not had access to all the places it had wished to visit, apparently for reasons of security.

8. It is true that the Rapporteur was unable to visit the Democratic Republic of the Congo, which would have been extremely useful in giving him a more accurate picture of the situation and, in particular, in enabling him to obtain the Government's comments. In any case, the Democratic Republic of the Congo is not the first State investigated under the procedure established by Economic and Social Council resolution 1235 (XLII) which has refused to cooperate with a mechanism established by the Commission on Human Rights. Chile did the same on numerous occasions under the dictatorship of General Pinochet, and many other Governments act in a similar fashion. The fact that a country was not visited does not disqualify a report, either from

a legal point of view - all the more so when the State is responsible, or where the seriousness, objectivity and truth of its contents are concerned. This has always been the attitude of the Commission on Human Rights and the General Assembly.

9. The Rapporteur reiterates the concern already expressed in his report of 2 April that he senses a climate of fear of testifying, and even of testifying abroad, which was not the case between 1994 and 1996 (E/CN.4/1997/6/Add.2, para. 9).

C. The Special Rapporteur and the authorities of the former Zaire and the Democratic Republic of the Congo

10. Following his report E/CN.4/1997/6/Add.2, the then rebel AFDL forces rejected any form of collaboration with the Special Rapporteur of the Commission on Human Rights, either individually or as a member of the joint mission. The joint mission was therefore refused access on the grounds that the Special Rapporteur had lied and failed to display objectivity. 3/ Later, when they were in power, the AFDL authorities added that the Special Rapporteur was persona non grata and would never again set foot on Congolese soil. None of the 24 communications transmitting 186 complaints of human rights violations, involving more than 430 persons, was answered, although the receipt of two of them was acknowledged.

11. Similarly, the Government of Mobutu and Prime Minister Kengo wa Dondo failed to reply to the five communications the Rapporteur addressed to them - either alone or with one of the thematic rapporteurs - asking for information or requesting protection for five victims of human rights violations. The only reply he received was to a communication sent jointly with the respective rapporteur on the participation of foreign mercenaries - Europeans and Africans - in regular Zairian groups. In its reply, the Government maintained that "it had no knowledge" of their participation, but objected to the fact that the Special Rapporteur did not concern himself with the Ugandan, Ethiopian and Eritrean mercenaries fighting on the side of the rebels.

D. International obligations of the Democratic Republic of the Congo

12. In his earlier reports, the Special Rapporteur mentioned the international treaties to which Zaire is a party; to these should be added as from 1996 the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Naturally, the change of political regime and the name of the country in no way affects its prior accession to treaties and conventions.

13. The Committee on the Elimination of Racial Discrimination considered the third to tenth reports of the former Zaire in 1996, and regretted their shortcomings, particularly with reference to the implementation of the Convention. The Committee stressed the positive aspect of the process of democratic transition initiated in 1990, but severely criticized discrimination against the pygmies (Batwa), noting that "the authorities scarcely intervened to ease the tribal and ethnic conflicts in Shaba and Kivu

and to protect the population". It also criticized the laws depriving the Banyarwanda of their Zairian nationality since they were "in violation of article 5 (d) (iii) of the Convention" (CERD/C/49/CRP.1/Add.28 of 21 August 1996).

14. The third periodic report required under the International Covenant on Civil and Political Rights has been due since 1989, and the last part of the initial report to the Committee on Economic, Social and Cultural Rights and subsequent reports have been due since 1987. Neither Zaire nor its successor, the Democratic Republic of the Congo, has submitted the reports provided for under the Convention on the Rights of the Child and the Convention against Torture.

15. Despite three reminders from the Committee on the Elimination of Discrimination against Women, the report pending since 1992 has not been submitted. However, CEDAW heard an oral report by a representative of Zaire on 16 January.

16. When conflict broke out in 1996, the four Geneva Conventions of 1949 were in force in Zaire but not the Additional Protocols of 1977.

17. The Democratic Republic of the Congo is party to the 1951 Convention relating to the Status of Refugees.

E. Office of the United Nations High Commissioner for Human Rights in the Democratic Republic of the Congo

18. The Office of the High Commissioner for Human Rights, proposed in the Special Rapporteur's first report (see E/CN.4/1995/67, para. 277) and established in the former Zaire on 10 December 1996, is mandated to follow the human rights situation, report to the High Commissioner for Human Rights and the Special Rapporteur, cooperate with the authorities in implementing the relevant international instruments, cooperate in NGO training and assist the Special Rapporteur. The Office had just one staff member in 1997; unfortunately, the first person appointed resigned four months after taking up the post.

F. Cooperation with United Nations machinery

19. In view of the particular importance which the Commission on Human Rights has attached since 1990 to the protection of persons who collaborate with its machinery (resolution 1997/56), both the Special Rapporteur and the joint mission have had to concern themselves with numerous reports of intimidation, arrests and other breaches of human rights committed by the AFDL authorities against persons who have collaborated with them and with the Secretary-General's investigation team. Some of these incidents are described in the report of the joint mission (E/CN.4/1998/64, paras. 19 and 20).

II. THE WAR OF LIBERATION AND INSTITUTIONAL CHANGE

20. In the report submitted to the General Assembly (A/52/496, paras. 29-35, and footnotes 9-12), there is a brief account of the course of the so-called war of liberation, which ended on 17 May with the seizure of Kinshasa by the

rebels of the Alliance of Democratic Forces for the Liberation of Congo-Zaire (AFDL). What was stated in that report will not be reproduced here for reasons of space.

III. HUMAN RIGHTS AND DEMOCRACY

21. In all his reports, the Rapporteur has expressed his belief in the existence of a human right to democracy. Civil and political rights can be enjoyed only in a democratic system, and democracy is the surest path to the achievement of economic, social and cultural rights. The exercise or infringement of this right cannot be overlooked in a report of this nature, particularly since the Commission on Human Rights, in paragraphs 1 (d), 2 (g) and 3 (g) and (h) of its resolution 1997/58, attached, and rightly so, great importance to the democratic process.

A. The demise of an authoritarian regime

22. The final months of the long Mabuto era were chaotic. The autocrat was barred by ill health from governing, the Kengo Government had fallen into disrepute, the people were bewildered and disillusioned, and the political class was discredited (E/CN.4/1996/66, paras. 60-63; E/CN.4/1997/6, paras. 39-44, inter alia). The Catholic bishops stated on 4 January that, in order to hold on to power, members of the transitional institutions were resorting to demagogic manoeuvres, such as lies, deception and corruption, and refusing to bow to popular sovereignty. This was shown by the March agreement whereby power was shared by a committee of 66 composed of numerous parties, but not including UDPS, PALU or the National Front. The changes of government and currency reflected the prevailing anarchy. With regard to the former, after the fall of Kisangani and in response to persistent rumours of an impending coup d'état, HCR-PT dismissed Kengo, who had predicted that the city would not be taken by the rebels. His successor, Etienne Tshisekedi, repealed the Transitional Constitution, offered six ministries to AFDL (which Kabila scornfully declined) and dissolved HCR-PT, earning the condemnation of the rest of the political class. No sooner had he assumed office than Mobuto, invoking the recently declared state of emergency, dismissed him. General Likulia Bolongo was appointed to succeed him.

23. Twice during the year, the Government issued new banknotes, but this only served to further discredit it. In January, people started calling the notes "prostates", "mimi-oranges" and "death notes", and in May "ouqueniques". No one accepted them.

24. The electoral process, delayed by manoeuvrings of Mabuto's supporters and a lack of real commitment on the part of the political class (see the three annual reports of the Special Rapporteur), was dealt a death blow on 28 January, when Prime Minister Kengo wa Dondo informed HCR-PT that, because of financial problems, neither a constitutional referendum nor elections would be held. The Zairian people however, were unenthusiastic about their political class, not about the idea of democracy. During the National Sovereign Conference (CNS) in 1991/92, they had demonstrated their longing to be free and to fight for freedom, and had paid for that longing with much

spilt blood. Public support for AFDL can be accounted for by what Kabila said when he launched his drive for power, namely, that his struggle was motivated by the non-observance of the CNS agreements.

25. Since 24 April 1990 the Zairian people had obtained some limited but important rights, such as the right to form political parties and non-governmental organizations and to have access, albeit under severe constraints, to the print media.

B. The installation of a new regime: authority in the so-called "liberated" territories

26. At the beginning of the war, the Alliance's political programme was unclear. Its messages were contradictory: some appeared to be liberal (democracy, separation of powers and a market economy), while others were reminiscent of Marxist practices (re-educating the masses, class struggle, courses in ideology as a prerequisite for public office and mass demonstrations of support for the Government organized by the Government itself, such as the one held on 30 August against United Nations interference with regard to human rights violations).

27. In the early months, the daily newspaper Congo Libre announced that AFDL would not be a State party like the Mouvement populaire de la révolution (MPR). As they advanced, however, the rebels announced that, following liberation, AFDL and "true opponents" - meaning those who joined them - would govern. Local leaders who had headed the peaceful resistance to the routed regime were systematically outlawed. The taking of the cities was followed by changes in their political and military authorities although, as a rule, junior government officials were not affected. They were, however, required to take political indoctrination courses and then to join the "Tshembe-Tshembe", or Committees for the Defence of the Revolution, self-defence militias reminiscent of the hated MPR Action Corps for the Defence of the Republic (CADERs) of the darkest days of Mobutu's reign.

28. The replacement of traditional chiefs by Tutsi in the areas bordering on Rwanda was particularly significant and caused indignation among the so-called "indigenous" ethnic groups, such as the Batembo and Batiri. Some of the replacements were carried out in a humiliating manner, as in Ziralo, where Tutsi soldiers forced the traditional chiefs to carry their baggage. By mid-July nearly all the traditional chiefs had been replaced.

29. AFDL pronouncements, the only ones to be heard, spoke only of the progress of the war, the rebuilding of the country and encomiums to the rebel leaders. Some leaders of grass-roots organizations were elected by a show of hands in the presence of the authorities, in a dubious display of democracy. Although former opponents of Mobutu were given posts, power actually lay with the senior military officers.

30. There was no respect for freedom of expression, opinion, association or assembly during the war. Political parties, except for AFDL, continued to be banned and the activities of non-governmental organizations were severely restricted.

31. Some foreign Powers granted de facto recognition to the new rulers before their final triumph; in April, the rebels, acting as a sovereign State, signed contracts for the mining of copper, zinc and cobalt ores with foreign companies.

C. The new power structure

32. On the day that Kinshasa fell to the rebels, Kabila announced in Lubumbashi that he was assuming the office of President of the Republic, citing as statutory authority the AFDL charter of October 1996. This document had the force of a constitutional text until 28 May.

33. On 28 May 1997, Decree-Law No. 3 4/ was promulgated and, in accordance with its article XV, entered into force on that same day. Under article XIV, all previous constitutional, legal and regulatory provisions were repealed, whether or not they conflicted with it. The CNS agreements and the Transitional Constitution of 9 April 1994 were thus consigned to oblivion.

34. The Special Rapporteur cannot but describe this constitutional text as being fully in the authoritarian mould. Article I is abundantly clear on this score: the organization and exercise of power are in the hands of the head of State. Such a provision is the exact opposite of what the Special Rapporteur had proposed in previous reports with regard to Marshal Mobutu, namely, limits on his powers and respect for human rights (E/CN.4/1995/67, paras. 248 and 260; E/CN.4/1996/66, paras. 120 (a) and 125 (a); E/CN.4/1997/6, para. 214).

Executive branch

35. The text provides that the institutions of the Republic are the President, the Government and the courts. No provision is made for a legislative body, even as a formality. The President of the Republic is the Head of State (article IV), but there is no mention of how he is elected, by whom or for how long. Nor is there any mention of a body that would carry out the functions of government, although this would appear to be the Council of Ministers, whose meetings are presided over by the Head of State.

Legislative branch

36. Legislative authority is vested in the Head of State, who exercises it through decree-laws discussed in the Council of Ministers; ministers are appointed and dismissed by the Head of State, to whom they are accountable (articles V, VI and X).

Judicial branch

37. While the text proclaims the independence of judges and magistrates and the public Prosecutor's Office, the President of the Republic can replace them and, where appropriate, dismiss them on the proposal of the Supreme Council of the Judiciary. However, the Council is not functioning, and its responsibilities are being discharged by the Alliance, its activity will be analysed below. 5/

Human rights guarantees

38. With the repeal of previous constitutional texts, the only constitutional protection for human rights and freedoms is that found within the limited confines of article II, which amounts more to a limitation than to a guarantee: the exercise of individual and collective rights and freedoms is guaranteed subject to respect for the law, public order and public morality.

Armed forces

39. The chief of the armed forces is the President of the Republic, who has authority over them in accordance with articles V and VIII of the Decree-Law cited above. Various groups exist within the armed forces, whatever the Government may say to the contrary: 6/ the most important is the Batutsi group; there are members of the former FAZ who have been re-educated or are in the process of being re-educated; former Katangese gendarmes; 7/ former Mai-Mai combatants; and mercenaries from neighbouring countries. There is a clear preponderance not just of Batutsi but of Rwandan-born Batutsi, as a result of the transboundary nationality which will be discussed below. All new members of the armed forces will have to take courses in military and ideological indoctrination, and the recruitment of 40,000 young people has been announced.

40. The former FAZ disappeared once they were defeated or, more precisely, before they were defeated, since they fled the fighting and turned their attention to looting their compatriots. Only the Special Presidential Division (DSP) offered any resistance in Lubumbashi and other cities, keeping up its resistance to the end. Some members managed to join the victorious army and were sent to concentration camps for re-education or "retraining". Such programmes are being carried out in Kitona (Bas-Congo), Kapalata (Eastern Province), Kamina (Katanga) and Kota-Koli (Equateur), and at least in the first camp, there have been reliable reports that soldiers are beaten, lack medical care and have a very high mortality rate (7 to 12 deaths a day, it is claimed). The families of these soldiers have been completely abandoned, as they receive no wages. At the military training centre in Kapalata, some 220 soldiers died of cholera or malnutrition in December, and about 1,200 are estimated to be sick, although other sources speak of poisoning.

41. There have been a number of changes in the structure of the military and the police. Thus, the National Intelligence and Protection Service (SNIP) became the National Information Agency (ANR), with new senior officers. The Rapid Intervention Police (PIR) has been set up. The Military Detection of Unpatriotic Activities Police (DEMIAP) has replaced SARM and is actively suppressing dissidence. Another agency is the Special Investigation and Information Department (DSIR). In addition, President Kabila has established his own presidential protection corps, on the lines of Mobutu's detested Special Presidential Division. The President wants to establish an army of 600,000 men, six times larger than that of the former dictator. Instead of improving security, this proliferation of agencies is, as in Mobutu's time, weakening security and confusing the population.

42. The armed forces appear to have no precise structure and no identifiable ranks or responsibilities. Their officers are known under the generic name of

"afande", which corresponds to "commander". All military personnel are "afandes" and at the same time none are "afandes". They are known to each other by their first names (John, James, etc.) but whether these are their real names is doubtful. Many speak in English.

43. Up to the middle of November the Commander of the army was Anselme Masasu Ningaba, a Congolese Mututsi who is not a career soldier but the leader of one of the four parties in AFDL. The real chief, however, was always considered to be Colonel James Kabare, G3 of the Rwandan Patriotic Army and a Rwandan national, although he maintains that he has Congolese grandparents from Kivu. He has been made responsible for organizing the new Congolese army.

44. On 25 November, a coup within the army resulted in supreme command of the army passing to the Rwandan Kabare and the Katangese Batutsi Masasu Ningaba being sent to prison, as a result of the by now unconcealable internal power struggles. The late and confused official communiqués speak of "dubious activities", subsequently spelled out as disobedience, connivance with foreigners, illegal seizure of property and consumption of marijuana; it was even denied that he had participated in the war. With his detention and the assassination of Ngandu Kisase in January, two of the four founder members of AFDL have been eliminated.

45. Transboundary Tutsi nationality allows the police and armed forces to operate in joint units or commands in both the Democratic Republic of the Congo and Rwanda. Thus, Colonel César Kayizari is said to exercise control and supervision not only in Bukavu (Sud-Kivu) but also in Gikongoro and Cyangungu, both Rwandan cities. According to other sources, they simply conduct joint missions, patrols or actions. The same system is said to apply between Goma and Gisenyi. For these reasons, in Goma and its surrounding area uniformed personnel have become known as "soldiers without frontiers"; in transferring detainees from one country to the other, they give rise to "prisoners without frontiers", thus creating a parallel with the names of certain prestigious non-governmental organizations. This ensures impunity for human rights abuses.

46. Various other factors help to prevent the proper functioning of the armed forces. It was initially accepted that each group would pursue its own interests (the Alliance would deal with the Hutu, reincorporated members of the former FAZ with the Mai-Mai, the Katangese with the people of Kinshasa, etc.), with the inevitable result that human rights were not protected. Secondly, some differences have arisen: between the members of AFDL and the former FAZ; between the Rwandans (for whom the elimination of the refugees was the first priority 8/) and the Katangese (who maintained during the war that their fight was against the Mobutu dictatorship and not against the refugees), and between the latter and the Kasaians; between the Bandundu and the Baswahili (in the east). Another source of friction is created by the differences in wages since the Batutsi are paid US$ 100, in dollars, while the others receive the equivalent of only 20 dollars, in new zaires. In addition, the Congolese complain of being treated as inferiors. On 23 August at the CETA camp in Kinshasa, a fight broke out between Congolese and Rwandan

soldiers returning from Kitana and six men were killed (three on each side). Responsibility for an attempt on the life of Séverin Kabwe, who appeared to be the director of ANR, is attributed to his predecessor Paul Kabongo.

47. These struggles between military factions lay at the origin of the main conflicts: first, the conflict which led to Masasu arresting Paul Kabongo, the former director of ANR, and the conflict which gave rise to the arrest of Masasu and the clashes which caused 11 deaths (9 soldiers and 2 civilians) on 28 November.

48. As usual, it is the civilian population that suffers most from the fighting between military factions: they are subjected to extortion, looting and theft, frequently by the kadogos (Tutsi child soldiers recruited without any training and armed with heavy weapons) who live off looting and extortion and are sometimes said to travel in vehicles stolen from former Mobutu dignitaries.

49. Role of AFDL: The real power in the country rests with AFDL, as indeed President Kabila stated in announcing his assumption of power on 17 May. It is, of course, the only authorized party. Other parties may join it but may not act individually. The ministers (of the civil service, initially Justine Kasa Vubu and later Paul Kapita), regional governors (Eastern Kasai, Eastern Province), mayors (Kinshasa) and others belonging to UDPS and other democratic parties act in their personal capacity.

50. The Deputy Secretary-General of AFDL, Gaëtan Kakudji, stated on 3 July that the Secretary-General of AFDL, followed by his Deputy, ranked in order of seniority after the President. In practice, in Kabila's absence the Council of Ministers is presided over by AFDL Secretary Deogratia Bugera. Some decisions of the civil authorities are overruled by AFDL. Every independent minister has an AFDL adviser, who is seen as the real authority; this has led AFDL to be assimilated to the old MPR. It may be noted in passing that in January the new ministers had to swear allegiance to President Kabila and the Alliance.

51. The Alliance is dominated by members of the Tutsi ethnic group, including the Banyamulenge, and by people who lived in exile in the United States, Belgium and South Africa during the dictatorship (the "diaspora"). A third important group are the Katangese. Some former companions of Lumumba in the 1960s have also come to the fore. It has not been possible to overcome the lack of plurality in AFDL and the Government. Abroad, hopes of an improvement had been raised by the announced change of cabinet due to take place in January 1998. But within the country distress merely increased; the same sphere of influence was strengthened, and the new Minister of the Interior is a cousin of the President.

52. Role of the historical opposition to the Mobutu regime: The peaceful opposition to Mobutu is frustrated at being marginalized. The Union for Democracy and Social Progress (UDPS) has complained about this since the installation of the new regime. On 14 June, it criticized the Government for having departed completely from the CNS agreements; on 17 June, the Unified Lumumbist Party (PALU) demanded that the Government reduce the transition period to 12 months; the Christian Democrats called for the

formation of a Front pour la survie de la démocratie (FSD); and Joseph Olenghankoy, leader of the Forces novatrices pour l'union et la solidarité (FONUS), criticized the undemocratic course taken by AFDL (24 June). The Catholic bishops have expressed regret that war has been the means used to end the dictatorship and, above all, that the political programme approved by CNS is not being followed and that the new authorities do not respect human dignity (2 July). The people have also expressed their views in public demonstrations calling for genuine democracy and the departure of the Rwandans in the Government, such as those organized by UDPS on 20 and 30 June, 25 July and 15 August and by PALU on 25 July.

53. By a decision issued on 26 May by the Deputy Minister of the Interior, Faustin Munene, all political activity has been banned. Analysts believe that this course of action was motivated not only by fear of hearing people's views, but also by the aim, in which the Mobutu dictatorship was successful at least until 1990, of outlawing all dissent, preventing the emergence of opposition leaders and obstructing, through repression, any attempt at organization. The ban on parties is by no means temporary: the powerful Secretary-General of AFDL announced on 1 June that it would last "for two years, in the interests of effectiveness", and on 28 August the Minister of the Interior, Mwenze Kongolo, extended it sine die as well as prohibiting the use and display of flags, placards, etc. and warning that any persons who flouted the ban would be severely punished. On 19 November, Kabila reiterated the ban on parties on the grounds of the state of emergency.

54. The effect of this policy has been obvious: of the 400 of so parties which existed on 17 May, there are no more than 15 today. The acts of repression against the parties are described later in this report (paragraphs. 181-191).

55. The only attempt to convene a national congress was made on 25 August, when Minister for the Reconstruction Mbaya announced that in December there would be a National Conference on the Reconstruction of the Country, which would be attended by as yet unspecified "active forces of the nation". The reasonable conditions demanded by the only organizations convened were not accepted by the Government, and the Conference was cancelled.

56. A certain change in the Government's discourse in October and November and, above all, in the days prior to a meeting of countries known as "friends of the Democratic Republic of the Congo" held in Brussels on 3 and 4 December, together with the designation without consultation of leaders of democratic parties in the Constitutional Committee and even of incumbents of ministerial posts (some of those designated did not accept), have not swung opinion behind the reconciliation plans of the AFDL Government.

D. Transboundary nationality

57. The Rapporteur mentioned in his reports E/CN.4/1996/66, paragraphs 84, 85 and 130, and E/CN.4/1997/6, paragraphs 111-138 and 239, the extremely serious problem of the nationality of Kinyarwanda-speaking Zairians, who had been made stateless by a law of 1981. Many of those who criticized the Rapporteur for his remarks now accept that the nationality issue cannot be left unresolved.

58. Unfortunately, a de facto solution has emerged that runs counter to the principles and norms of international law: simply belonging to an ethnic group in practice confers nationality in all the countries where that group holds political power.

59. This phenomenon arose before the war, when Banyamulenge Zairian Batutsi who had supported the Rwandan Patriotic Front were given important posts in Rwanda, despite calling themselves Zairians (see E/CN.4/1997/6, paragraph. 178).

60. There are Batutsi in power now who only a short time ago fled to South Africa as Rwandan citizens, who studied in Zaire as Rwandan citizens or who keep their Rwandan families in Rwanda without taking Congolese nationality. The Congolese consider them to be foreigners and their power is seen as an affront to national honour.

E. Promises of a new democratic order and the reality

61. From its first resolution on Zaire (1994/87) to its latest resolution (1997/58), the Commission on Human Rights has been concerned about the process of transition to a democratic regime. In the latest resolution (of 15 April 1997), the Commission welcomed the preparations for elections, including the establishment of the National Electoral Commission and the "decision to hold a constitutional referendum". However, it expressed its concern at the delay in the process, which had been aggravated by the war in eastern Zaire. It recalled the CNS agreements and urged that preparations for the elections should continue.

62. Unfortunately, the change of government, far from constituting progress, has in this respect been a major setback. It is true that under the Mobutu-Kengo Government progress was inadequate and slow, and did not appear to constitute a real commitment to the State's obligation to ensure that its citizens live, and enjoy the human right to live, in a democracy. 9/ But at least a process was under way.

63. The Government highlights as important achievements in attaining a democracy its triumph over Mobutu and the installation of a new Government; Decree-Law No. 3 concerning the establishment of the Improperly Acquired Property Office (OBMA); and the setting of an electoral timetable and the establishment of the Constitutional Commission.

64. In the light of all the foregoing, the overthrow of the preceding dictatorship cannot be other than a step towards democracy. But no democratic institution has been installed; Decree-Law No. 3 is, as has already been stated, fully in the traditional authoritarian mould; the OBMA has done nothing but perpetrate abuses and flout legality; the electoral timetable is is changed from one day to the next, and the Constitutional Commission merely represents the political interests of President Kabila.

1. Electoral timetable

65. On 19 May, the Secretary-General of AFDL announced that a constituent assembly would be convened in 60 days. On 29 May, however, President Kabila

sent a different message when he presented an electoral timetable that was to culminate in 24 months with the first legislative and presidential elections. The proposed timetable was due to begin in 1997 with four activities requiring neither massive funding nor international assistance, only the will to carry them out and a real commitment to democracy.

66. However, on 13 July Foreign Minister Bizima Karaha stated in Washington that the pledge made by President Kabila was merely a target. It would not be possible to hold elections until the electorate had been educated and provocateurs imprisoned or exiled. Nevertheless, the President said emphatically: "Rest assured that these dates will be respected and that there will be no foreign pressure to change anything whatsoever". (*"Soyez assurés que ces dates seront respectées et qu'il n'y aura pas d'influence étrangere pour changer quoi que ce soit."*)

67. Nevertheless, the references to "April" as the month for the elections began to disappear. When, on 5 August, European cooperation with the Democratic Republic of the Congo was resumed, the President announced that the elections would be held in 1999 as scheduled, 10/ a statement which he reiterated on 2 September. Three days later, however, he said that the April 1999 elections might be deferred if the international community did not help the Democratic Republic of the Congo to repair its infrastructure. In his New Year message he said that the elections would be held in 1999, without mentioning a specific month. In any event, the Rapporteur has been informed that there are no teams preparing either the elections or the necessary groundwork for holding them.

2. Constitutional Commission

68. The announcement of 19 May by the Secretary-General of AFDL about the convening of a constituent assembly in 60 days was not honoured. Independence Day - 30 June - passed without the expected announcement of the establishment of the Constitutional Commission or of the convening of a constituent assembly, which had been announced by Deogratia Bugera, and in July no President of the Constitutional Commission was designated; its members were not designated in August and it was not solemnly inaugurated on 1 September.

69. Not until 23 October did President Kabila announce Decree-Law No. 37, which established a 46-strong Constitutional Commission, appointed by himself and with a mandate to report by 1 March 1998 (article 9).

70. The Constitutional Commission does not represent any kind of progress: all its members, officers and alternate members are appointed by the President. The officers designate the other members to ensure verticality. Furthermore, all its members will automatically enter the Constituent Assembly, which is due to come into being in June. Although it has been said that the members of the Assembly will be elected, it is still not known how. In any event, 46 seats in the Assembly have already been allocated.

71. Two members of the Commission have already tendered their resignation, and in his resignation statement at least one of them cited its undemocratic character in particular.

72. In the Commission a dominant role is played by the senior AFDL leaders (at least two ministers, and the father of one of them, the Secretary-General of AFDL) and also former collaborators of Patrice Emery Lumumba of the 1960s.

IV. CURRENT ARMED CONFLICTS

73. In addition to the conflicts arising out of the aftermath of the war and the change of government, there are still other armed conflicts, some of them on the wane, others in full swing, and yet others in preparation. Some of these are described below.

A. Continuing war in Nord-Kivu

74. The war in Nord-Kivu, referred to by the Rapporteur in his report (E/CN.4/1996/6), which began in March 1993 with the attack on the Ntoto market and seemed to have died down with the expulsion of the Batutsi in 1996, has increased in intensity.

75. This intensification is due to a number of factors, namely, the return to Nord-Kivu of the Batutsi expelled in 1996 and now equipped with abundant weapons in an attempt to recover their lost possessions; continuing attacks by the Mai-Mai guerrillas who are at present allied with former members of FAZ and FAR and the Interahamwe militia; the clandestine activities of the latter who escaped from refugee camps and of whom many are still hiding out in Virunga park and other places. Moreover, there have been reports of the displacement of Rwandese Tutsis to Nord-Kivu in order to populate this region, as well as the replacement, sometimes in a humiliating fashion, of the traditional chiefs of ethnic groups regarded as indigenous by the new Tutsi authorities (see paragraph 28).

76. The intervention of APR, which has been acknowledged by the present Commander of ANC, is beyond doubt: the armies of Rwanda and Congo are cooperating against the common enemy whom they can pursue anywhere (12 September). He circulated the transcript of a memorandum sent on 11 August by the Governor of Nord-Kivu to the Minister of the Interior informing him that hundreds of heavily-armed Rwandan soldiers in rubber dinghies were passing through Masisi and disembarking with the intention of reinforcing the Congolese army that was operating in the region.

77. Innumerable attacks were launched by both sides but, as usual, most of the victims were either Congolese or Rwandan civilians. Although no estimates of the number of victims are available, humanitarian agencies mention some 2,000 dead up to September, as well as thousands of displaced Bahutu, Batutsi and Congolese. The environment has been badly ravaged.

78. Among the better-known incidents, mention may be made of one that cost the lives of eight AFDL soldiers on 23 April, three clashes in May on the Bukavu-Uvira road, and others at the Sake Masisi crossroads, on the Goma-Rutshuru road and subsequently in Minova, Makelele, Nyabibwa, Ngungu, Nyabombo, Katale and other places. The many villages burnt down include Masisi, Bulwa, Minfi, Birere, Mutiri, Bushuhi, Kahocho, Kanii, Buabo, Kibirangiro, Kyafulu, Byonga, and Molambozi (November).

79. The conflict, of the same nature and origin, has also spread to Sud-Kivu where, at the beginning of October, the Mai-Mai seized control of part of the region between Bukavu and Kavumu (airport sector) and the town of Makituga. Dozens of persons were killed prior to the retreat of AFDL, which later on, by way of reprisals, is said to have bombarded Lugushwa and Byonga.
On 11 December, Mai-Mai militiamen, together with former members of FAZ and FAR and Interahamwe, took the town of Bukavu with the intention - as announced by the clandestine "Patriot Radio" - of expelling all Batutsi to Rwanda, released prisoners and then made off. The official account mentioned 5 dead, although other sources speak of about 20. As was to be expected, defenceless citizens were the victims of the reprisals.

80. On 24, 25 and 26 December fighting, resulting in a large number of dead, took place in Kanyaruchinya ("the assailants came from Rwanda"), Nyarangongo and Bukumu.

81. The Government's responsibility in this matter is obvious: in the first place, the conflict reached its peak in July and August, the Alliance having already consolidated its power; secondly, AFDL, with the support of APR, participated directly. One example is the destruction, with the help of three helicopters, of the town of Masisi, among others; Masisi hospital was burnt down and the patients murdered.

82. However, there is no doubt in the Rapporteur's mind that all parties to this conflict were responsible for flagrant and extremely serious violations of the norms of international humanitarian law.

83. On 10 September, the Government announced the establishment of a 32-member Pacification Commission. Subsequently, however, President Kabila attributed all responsibility to former members of FAR and Interahamwe adding that the Mai-Mai represented nobody, a fact which deprived the Commission of all meaning.

84. The only serious efforts made consisted in the replacement of Rwandan soldiers by Congolese AFDL soldiers. This, however, resulted in looting and the flight of about 7,000 Congolese Tutsi, 11/ and in "afande" Masasu Ningaba's mission which, although bringing about a certain amount of pacification, resulted in his arrest (paragraphs 44 and 173).

85. The Government has stated that a number of Mai-Mai and Bahutu surrendered to the AFDL forces. In point of fact, however, it appears that only about 600 did so, and of this number 500 were massacred at Kinyongote on 11 September, according to what the Rapporteur was told.

B. Activities of the Conseil de la résistance et de la libération de Kivu

86. Former officials of the Mobutu regime, such as former First Vice-President of HCR-PT. Anzuluni Bembe (founder of GRABISI, Groupe d'appui et de soutien à Anzuluni Bembe Isilonyi), former Prime Minister Faustin Birindwa, former Minister Pay Pay and others, most of them of the Bembe ethnic group, with the help of other persons such as Charles Nsimba, a former comrade of President Kabila, have, in Tanzania, formed a Conseil de la résistance et de la libération de Kivu, which is said to have carried out

attacks on the region, although the Rapporteur has been unable to confirm this. Babembe, Bafulero, Bavira, former members of FAR and the Nyangoma Front for the Defence of Democracy (Burundians) allegedly participated in these attacks.

87. It has been impossible to confirm the report of an AFDL attack against Conseil militants in Fizi between 2 and 5 August, which allegedly caused some 800 deaths.

C. Calls to resistance by generals of the former Zairian Armed Forces

88. Although, to date, no major incidents have been reported, a dangerous call to resistance has gone out from former generals Eluki Mongo Aundu, former chief of the FAZ General Staff and Nzimbi Ngbalo Kingo wa Basa, former Commander of DSP, Grand Admiral Mavua Mudima, Baramoto Kpama, former Commander of the Civil Guard, and Ilunga Shamamba, former Minister of the Interior, who are already said to be recruiting former solders of the defeated FAZ and mercenaries. This movement was supported by Mobutu from exile. On 13 December, Baramoto, Mavua and Nzimbi were arrested in South Africa for these activities. Although this call to resistance seems to have been unsuccessful, it had repercussions within DRC in that many non-office-holding soldiers were arrested on a charge of collaborating with the generals in exile.

D. Violence against Cabindan leaders in Eastern Province

89. It has been reported that in Eastern Province Alliance soldiers attacked, tortured and killed Cabindans exiled there. The perpetrators look like Alliance soldiers but, curiously, speak Portuguese, which seems to suggest that an Angolan conflict has been imported into the Democratic Republic of the Congo. One such incident occurred in Kimblanga, where a number of persons were killed. This violence has apparently come to an end since it seems that there are no longer any Cabindan leaders alive.

V. SITUATION IN THE REFUGEE CAMPS

90. Previous reports contained a description of, among other things, the situation of the Rwandan refugee camps in Zaire, the security measures introduced by the international community, the Zairian Government's failure to comply with its undertaking to isolate those responsible for genocide or intimidation, etc. In general, Zaire agreed to suffer the consequences of a tragedy that occurred in another country (E/CN.4/1995/67, paras. 96 to 103; E/CN.4/1996/66, paras. 43 to 54), accepting refugees. The consequences of the war were discussed in document E/CN.4/1997/6 and Add.2 and in the report of the joint mission (A/51/942, sect. IV): rebel attacks backed by foreign armed forces, so-called voluntary repatriation; voluntary repatriation with the assistance of UNHCR and the disappearance, by May 1997, of some 140,000 refugees. The attacks on the camps and the blockading of humanitarian assistance were mentioned as methods of extermination.

91. Humanitarian assistance to the refugees, although not completely blocked, encountered serious difficulties, such as denial of access for days on end, restriction to certain times, etc. The Government's decision to send

AFDL troops to the Shabunda camps (Sud-Kivu) on the pretext of monitoring the repatriation of refugees was a source of concern; this action led this Rapporteur and the Special Rapporteur on extrajudicial, summary or arbitrary executions to ask the United Nations High Commissioner for Refugees to intervene. UNHCR notified the rapporteurs of the steps taken, which ultimately proved effective.

92. In mid-December and following the repatriation of some 685,000 persons at the end of 1996 and another 184,000 in 1997 (making a total of 869,000), in addition to the persons expelled by the Kinshasa authorities in flagrant violation of the 1951 Convention relating to the Status of Refugees, some 35,000 had been located in various towns and villages. In September, and following the refoulement, all refugee camps in the Democratic Republic of the Congo were closed. However, the fate of some 180,000 refugees was still unknown.

93. The Government still maintains that the refugees are responsible for genocide, killings, etc. and that they are protected by UNHCR. On 2 October, Minister Kongolo ordered all humanitarian organizations working in Goma to depart without delay, a measure that became effective immediately for UNHCR and on 4 December for the NGOs working with it. He also ordered the expulsion of the remaining refugees in the country. UNHCR's absence from the region created a serious problem for the Congolese Batutsi who had taken refuge in Rwanda as a result of the war in Nord-Kivu (see E/CN.4/1997/6/Add.2, and paras. 74-85 above). On 11 December the Mudende Congolese Batutsi refugee camp in Gisenyi (Rwanda) was attacked and between 302 and 1,614 persons were killed; this event obliged the two Governments concerned to plan the return of refugees to the Democratic Republic of the Congo. However, owing to the closure of the camps in Goma, UNHCR announced that it would be unable to provide the humanitarian assistance required, and so the refugees had to remain in Rwanda and were transferred to the Byumba camp.

94. A further influx of refugees from Rwanda began in October. These persons were Bahutu who had been repatriated and once again persecuted in Rwanda, particularly in the Gisenyi and Ruhengeri prefectures. Their number is estimated at between 4,000 and 5,000 and they are not receiving UNHCR assistance because of the obstacles created by the Government.

Violation of the basic principle of non-refoulement

95. The Mobutu Government, in general, respected the principle of non-refoulement, the cornerstone of the international refugee protection system. Quantitatively, violations were at their lowest levels between 27 November 1994 and 19 August 1995, despite the enormous pressure from Zairian society to expel all the Rwandans and the threats to close the camps.

96. The same was not true in the territories under the authority of AFDL. The attacks on the camps, the blockading of humanitarian assistance, the forcing of the refugees into the forests and the deceit used to lure them out by promising them food and then massacring them - all these and other actions are not only a violation of the obligation to protect the human rights of refugees, but have also generated overwhelming pressure in favour of forcible repatriation.

97. Cases of refoulement in its traditional sense have also occurred. On the night of 3/4 September, with no advance warning, soldiers from the Alliance, which had announced its intention to expel the refugees, surrounded the Kisangani refugee transport facility, removed about 440 Rwandan refugees and 325 Burundian refugees, including 252 women and 242 children, and flew them to Kigali in three flights. The High Commissioner for Refugees lodged a strong protest against this outrage. Other cases occurred in Kisangani (23 November) and elsewhere.

98. The Government has also sent back to Burundi a large number of Burundians who had been refugees in the Democratic Republic of the Congo for over 25 years; over 100 of these persons were undeniably of Congolese nationality.

Internally displaced persons

99. The situation of internally displaced persons as a result of the influx of Rwandan refugees, the ethnic conflict in Nord-Kivu and the war of liberation were analysed in the reports of the Rapporteur (E/CN.4/1997/6/Add.1, E/CN.4/1996/66, paras. 23-32) and of the joint mission (A/56/942). The ending of the war of liberation did not solve the problem, although some Batutsi displaced from Nord-Kivu were able to return to their homes. However, the renewal of the conflicts in that region has caused further displacements.

VI. HUMAN RIGHTS UNDER THE REGIME OF MARSHAL MOBUTU

100. The pattern of human rights violations described in previous reports did not change in the areas controlled by Marshal Mobutu's regime until 17 May. There was a general atmosphere of insecurity, in which the population suffered from: the arbitrariness and brazen arrogance of the Zairian armed forces; an inefficient judiciary; severe repression of freedom of expression and opinion, although within the margin of freedom tolerated since the National Sovereign Conference; systematic torture and deplorable prison conditions; and the absence of measures to give effect to economic, social and cultural rights. Two new forms of abuse appeared: dissidents were accused of acting in complicity with the foreign aggressor and opposing the new banknotes. The mere mention of Kabila's name was cause for reprisals, and it became extremely risky to possess photographs of Gisenga or Lumumba. The traditional oppressors - the army and the police - were joined by Serb mercenaries. Some newspapers incited racial hatred, especially against the Baluba, the ethnic group to which Tshisekedi and Kabila belonged. The situation of the NGOs was extremely precarious.

101. As they fled from the advancing rebels, the soldiers engaged in looting and committed all kinds of atrocities, with the result that the rebels were received as genuine liberators. In many cases the victims were former leaders and political opponents of Mobutu with whom FAZ members settled past accounts. On other occasions, any property at all was looted - from Hutu refugees and from hospitals (at Kindu in February, for example). The people called the FAZ soldiers "fleeing looters" (pillards-fuyards).

A. Right to life

102. Death penalty: As in previous years, death sentences continued to be handed down, particularly in cases connected with the war, with no respect for due process. The Rapporteur learned of the cases of Dr. Joseph Kanku Pinganay, accused of spying, of 14 soldiers of various ranks accused of cowardice and of one official accused of robbery. However, as in previous years, these sentences were not carried out. Some of the prisoners were transferred to Kinshasa, but escaped when the rebels arrived.

103. Political murders: The most dramatic case of political murder committed by DSP was the assassination of General Mahele Lioko Bolungu and General Busembo, together with the former's bodyguard, Kasemba, who were accused of being traitors when Kinshasa fell. There were many others, however, especially during the fall of the capital, when Batutsi were being hunted down.

104. Arbitrary deprivation of life through abuse of power shielded by impunity: The acts attributed to the Serb mercenary Dominique Yugo are especially serious. He is accused not only of crimes related to the war for which he was hired, but also of ordinary offences. According to reliable reports received by the Groupe Justice et Libération, Yugo personally executed some 120 people between 2 and 15 March.

105. There were reports that the Zairian Armed Forces, in their flight, committed acts of looting that resulted in death, such as that of Dr. Bongo on 3 January in Goma.

B. Right to physical and psychological integrity

106. Systematic torture under the Mobutu regime showed no change from previous years. Reports were received of the torture suffered by Christophe Mpiana Kadjanda, a trade union leader detained on 21 February for proposing negotiations with the Alliance, and by Bayato, in Kisangani, who was detained and tortured for 48 hours for talking about the rebellion.

C. Right to security of the person

107. Reports agree that the only motivation of the Zairian Armed Forces in relocating to Equateur seems to have been to take as much as possible with them. Witnesses say: "The soldiers attacked me in Limite on 23 February and stole NZ 9,700,000"; "the soldiers in Ndolo attacked the AZADHO offices and stole NZ 1,600,000"; "the soldiers attacked Mandongi's house in Kisangani and stole NZ 2,500,000"; and "they looted the factory in Isiro, leaving thousands without jobs". It is impossible to list here the many other cases reported.

108. The security of José Olengankoy, a political leader (who had already been arrested in November 1996), Bembe Salaona, a businessman, and Aziz Kundili and Sanga Bongaga, political leaders, was also threatened by arbitrary acts of the authorities for criticizing the banknotes issued in January.

109. This right was also violated by incitement to ethnic hatred. In April, the Bangala (Mobutu's tribe) attacked the Baluba and Batutsi, who counter-attacked, all of which resulted in a large number of fatalities.

D. Right to personal liberty

110. In the last days of the deposed Government, there were many arbitrary arrests. The accusation of being a supporter of the Alliance was one of the most frequent reasons, as shown by the arrest in January of four youths from the so-called "original" Union de fédéralistes indépendants (UFERI) accused of being collaborators. Colonel Prosper Nabyolwa Muganguzi, who was accused of being a traitor, was arrested by SARM on 12 December 1996.

111. In addition to these cases, others are mentioned under the sections covering freedom of expression, assembly and association and include cases of torture.

E. Right to freedom of opinion

112. On 14 February, all political programmes on radio and television were prohibited, while in April foreign correspondents were required to renew their credentials on the pretext of combating disinformation.

113. The freedom of many journalists was curtailed. The cases reported include: (a) the editor of Le Palmarès, Michel Ladi Luya (detained from 4 to 24 January, for writing about Mobutu's illness); (b) a Swiss correspondent for Libération (expelled from the country on 23 February); (c) the correspondents for Le Monde and Radio France Internationale, who later suffered the same fate; (d) Emmanuel Kabongo Malu, of Le Potentiel, who was interrogated by SARM for more than five hours because of articles in that newspaper (7 February); (e) José Feruzi of L'Ouragan and Kasongo Mukishi of Le Bâtisseur, who were detained between 1 March and 1 April by the police; (f) journalists from Associated Press, who were arrested and beaten on 9 April for covering a political meeting; (g) the journalist Sapu Kasadi, who was attacked with a bayonet; (h) the wife and children of the exiled journalist Benjamin Sham Lapong, because of an article he wrote for La Tempête des tropiques in January.

F. Right to freedom of association

114. NGOs, and especially those dealing with human rights, found themselves in a particularly difficult situation. The persons affected included the President of AZADHO, Guillaume Ngefa, who was summoned to appear before the Government for criticizing the new banknotes, Clément Citeya, of Justice et Libération, and Dismas Kitenge, of Groupe Lotus in Kisangani, who were interrogated by the National Intelligence and Protection Service (SNIP) for receiving faxes from abroad.

G. Right to freedom of assembly

115. On 14 February, in response to a citywide strike organized by FONUS in Olenghankoy on 10 February, the Government banned all public demonstrations in Kinshasa. This did not prevent some from being held, but they were harshly

dealt with: on 7 March, the leaders of UDPS were arrested while participating in a demonstration, and another was violently put down on 9 April when UDPS accompanied Tshisekedi, who had been removed from office by Mobutu, in his march on the Prime Minister's offices. The same occurred on 14 April.

H. Economic, social and cultural rights

116. In this section, the Special Rapporteur refers back to the conditions described in his previous reports, particularly to the absence of measures to gradually ensure respect for these rights, the adverse effect of the deteriorating economy, the very high inflation rate (741 per cent in 1996, a rate that continued into the early months of 1997), and the low investment in health, education and housing.

117. The conflict exacerbated the lack of protection: a cholera epidemic, which was attributed to soldiers and civilians fleeing from the east, struck Kinshasa in April, and the State made no effort to help the victims.

118. Secondary school students were unable to sit their final examinations on schedule in three of the country's 11 regions (Bandundu, Bas-Zaire and Equateur). In Kinshasa, they were postponed because many parents were unable to raise the equivalent of US$ 10 for the examination fee.

I. Situation of children

119. Here again the Rapporteur refers back to his earlier reports. Since 1994 he has been expressing concern because extreme poverty primarily affects children, a situation that is aggravated by the complete absence of the State in terms of providing for education - which is mostly in the hands of parents - and health. In his 1997 report (E/CN.4/1997/6, para. 208) he expressed concern at the recruitment of children by FAZ, although this extremely serious practice seems to have been less widespread than in the case of AFDL.

J. Situation of women

120. Commission on Human Rights resolution 1997/58 requests the Rapporteur to continue to apply a gender perspective to a greater extent in drawing up his reports, including in the collection of information and in recommendations. The Rapporteur had expressed concern at the situation of women (E/CN.4/1995/67, paras. 238-241; E/CN.4/1996/66, paras. 112-115; E/CN.4/1997/6, paras. 150 and 151), but had also included violations of women's human rights in the sections devoted to each specific right. Owing to the lack of progress in this area, the more recent reports had referred back to earlier reports, noting any changes that might have occurred.

121. The Rapporteur received no reports, either from the deposed Government or from NGOs on changes in the situation of women. However, during his visit to Goma in March, he heard testimony from Zairian women who felt that their situation had worsened because of the conflict; shortages of basic necessities were even more serious this year.

122. Women continue to be subjected to torture as well as rape but the only cases where more specific data are available are those of Okako Djelo and Ikeha Onahindo, on 5 January in Kindu. An 11-year-old girl, Bebe Temate, was also raped in Kindu 48 hours later.

123. On 16 January, the Committee on the Elimination of Discrimination against Women (CEDAW) considered an oral report, submitted on an exceptional basis, by the representative of Zaire. Many aspects of this report differ considerably from the reports of the Rapporteur: "the political will to ensure women's societal and public participation was also apparent"; "only 14 per cent of girls [are] not at school or attending functional literacy programmes", and so on. The truth, in the Rapporteur's view, is that while steps have been taken to ensure women's participation, they have not reflected State policy but have been taken by civil society, and in the case of school enrolment the results leave much to be desired. The Committee noted a number of subjects of concern with regard to the situation of women (CEDAW/C/1997/L.1/Add.11).

VII. HUMAN RIGHTS IN THE LIBERATED AREAS AND UNDER THE GOVERNMENT OF PRESIDENT KABILA

124. The situation of human rights in the Democratic Republic of the Congo, both during the war and after the AFDL victory, may be described as follows:

(a) All power is in the hands of one person (see articles I, II, II, IV, V, VI, VII, IX and XII of Decree-Law No. 97-3 and paragraphs 51-58 above);

(b) A climate of terror prevails because of the way in which the Alliance won its victory, the fate met by the Rwandan refugees in the camps and the settling of 32-year-old scores;

(c) The regime is a military regime which has absolute control over the country;

(d) With the exception of Kinshasa, where newspapers are in circulation, the country is in a state of complete disinformation: there are no newspapers, radio stations are controlled by AFDL, there is no postal service and the telephone service is not working;

(e) There is terrible stigmatization: to be accused of genocide or of being, inter alia, a Mobutu supporter, 12/ an Interahamwe, a Hutu or a Bembe can be sufficient grounds for being killed, looted, stripped of one's property, arbitrarily detained, tortured or exiled. Even members of the local population are contemptuously referred to as "kichuchu";

(f) There is no mechanism whatever for participation.

125. Incidents which the Special Rapporteur mentions in his report (E/CN.4/1997/6/Add.2) as not being part of the war per se, such as summary executions (paragraph 22), enforced disappearances (paragraph 25), torture (paragraph 27), violations of freedom of expression (paragraph 29) and violations of the right to own property, should, where they occurred in 1997, be understood to be covered by this report.

A. Right to life

126. Death penalty: AFDL has reinstated the application of the death penalty, which was ordered in Mobutu's time but not carried out. The Rapporteur was informed of the following cases: (a) Kayongo Kisase was executed on 22 October, immediately after having been convicted on the spot by the Military Court in an irregular trial for a crime committed a few minutes before; (b) Eight soldiers were sentenced to death on 27 September for a riot in protest against the non-payment of their wages. They were not allowed to appeal; (c) A soldier, Mavuma Kieto, was sentenced and executed in public in Papa Kitembo stadium in Mbaza-Ngungu (Eastern Province) by AFDL Commander John Sankasa for a murder under ordinary law murder; (d) Colonel Katanga Monga and soldiers Mubere, Mwelwa, Kafuni, Muyombo and Kabeya were sentenced to death by the President of the Military Court, Commander Mokato Kiana; (e) Commander Mokato sentenced Mbaluku wa Mono to death for a murder under ordinary law. It is also reported that two other persons are awaiting execution in Kasaya prison in Lubumbashi.

127. Political murders: According to various reports which are credible, but which the Rapporteur was unable to confirm, André Kisase Ngandu, a Zairian who was a founder of AFDL and highly respected in the former Zaire, was assassinated by Alliance forces on 8 January 1997. The incident is attributed to a Rwandan soldier accused of numerous acts of violence both in his own country and in the Democratic Republic of the Congo. Two other very serious cases are the alleged murders of two Katangese gendarmes, part of a group of 13 people who were detained on arriving in Lubumbashi for an interview with President Kabila and General Muland.

128. Under the heading of "settling of scores", the following political murders were reported: on 15 May, an AFDL soldier killed a Hutu refugee, whom he suspected of having killed his family, in Mbandaka; on 15 May, Bahoya Likong, recruited by AFDL, was murdered for disloyalty; on 17 May, victorious troops killed the police chief of the Kisangani Terminus district in Kinshasa for allegedly inciting the local population to protest against their abuses; the following day, a member of the Batadulua Venant Civil Guard was murdered when he came to turn in his weapon; in late May, Professor Omotela, a human rights activist in Yabongo, was murdered by AFDL soldiers. A very serious case of mass political murder occurred in Uvira, during the night of 25/26 May, and is attributed by many sources to the soldier who allegedly killed André Kisase. Some 10 victims were first detained and then murdered in cold blood, causing public outrage (see paragraph 131 below). Another case of mass murder, apparently without trial, is that of 500 Mai Mai and Bahutu guerillas who surrendered to the AFDL forces and who were, according to what the Special Rapporteur was told, massacred in Kinyongote on 11 September. On 7 November, 14 Bahutu were executed on the orders of an "afande" in Kinyongote during the funeral of three other companions who had died as a result of torture in prison (see paragraph 134 (n)). Ndakpala Bulunda, a university professor and AFDL chairman in Rungu, was murdered by soldiers in Isiro Eastern Province, on 16 December.

129. Enforced disappearances: In addition to the cases mentioned in the report (E/CN.4/1997/6/Add.2, para. 25), many of which occurred in 1997, the most serious case was that of 16 Hutu soldiers in Mama Yemo Hospital (now the

General Hospital), who were removed by AFDL officers on the day that Kinshasa was taken over and who are still missing. Their last names are: Mugirameza, Musabye, Cymana, Nsengimana, Nkizumwami, Munyangazu, Munyarukiko, Byarugaba, Byarimana, Turatshinze, Kamanzi, Ruziriliramana, Turimimana, Utamuliza, Twagirayezu and Uwayezu. Matungulau Bareke, chief of the Kibuma group, and his brother Siyapata, were detained on 26 February and are still missing, as is their younger brother, detained on 7 April. As of the date of this report, there has been no news of Mbitsemunda Mazanga, detained on 16 April in the eighth military district jail. Nyangoma, a Kibingo merchant, was arrested and disappeared on 15 August. Bolenge, community chief in Djoa, Equateur, was kidnapped on 15 May by soldiers taken to be "Rwandans", was brought before the AFDL chief in Mbandaka, where he disappeared, and is still missing. Another case, which still has not been confirmed (see paragraph 138) is that of Freddy Libeba Baongoli, who was arrested on 21 December and tortured and of whom there is no news. Kayihura Alois, Hutu professor at the University of Kisangani, his wife, Mukantibimenya Felicité, and his children, Eustache and Rosine, were kidnapped on the university campus by Kinyarwanda-speaking soldiers on 17 November. Thirty-three Rwandan refugees, including children, were abducted by soldiers at Kisangani General Hospital after being accused of genocide.

130. Arbitrary deprivation of life through excessive use of force in repressing crime or dissidence: This category includes violations committed by public officials, in the exercise of their duties, in suppressing dissent or ordinary crime, such as the murder of Masango Nzani for seeking to attend a tribute to the much-loved General Mahele in the church in which his body was laid out, a crime committed after he had been overpowered, humiliated and forced to kneel and beg forgiveness; the murder of seven soldiers of the former Zairian armed forces, who were burned alive for alleged looting on 17 May; the murder of Limbete Lingoli in Yabotumelase for practising witchcraft; the killing of Komisa Kiakumbutu and Muzulu Theo when a peaceful march organized by the Parti lumumbiste unifié (PALU) was suppressed on 25 July; the killing of Alexandre Makolo when a student protest on 27 August in Kinshasa was suppressed; the killing of Martine Npuno Nkuba on 11 August for being in a place reserved for AFDL members in Lubumbashi; the killing of nine persons imprisoned for witchcraft in Kala, Katanga, in August. Twenty persons accused of corruption or simply of engaging in political activity were killed in early August and Nicole Bute was murdered on 20 May on suspicion of stealing a mirror.

131. The absurd and brutal suppression of the popular demonstration expressing outrage over the murders in Uvira on the night of 25/26 May (see paragraph 128) was particularly serious: according to some sources, 38 people, and according to others, 126 people, were killed and hundreds of others, including the new Governor, injured.

132. Arbitrary deprivation of life through abuse of power shielded by impunity: The indiscriminate violence against the stigmatized, the licence given to the kadogos to take booty and the lack of supervision in detention centres have resulted in many people being killed with impunity by AFDL soldiers: (a) 15 people were killed on 6 July at Ngiri-Ngiri; (b) two money changers, Vata and Botuli, were murdered in the Moulaert district of Bandalungwa; (c) a boy, Rene Balika, was killed by a grenade and many other

people injured on 13 July; (d) shopkeeper Ewalo Monga was killed on 15 July in Limite, Kinshasa, when he was robbed of NZ 14 million; (e) Mrs. Mbambu Rufunda was murdered at Lume on 23 April; (f) a Labenese merchant was murdered on 17 July at Barumbu when he was robbed of US$ 7,000; (g) Justin Lokala was killed on 21 July because he recognized military assailants who had extorted money from him; (h) Thethe Tatia was killed on 23 July by soldiers who raided her house; (i) on 3 April, Clement Mujarwanda and Vincent Chikala, who were being held in a military jail at Ishasha, were killed by guards under the orders of Césaire in order to rob them of US$ 20,000; (j) on 13 June, soldiers killed two people who were drinking beer in Nganda, Nord-Kivu; (k) on 6 July, Léandre Hamisi was murdered at Karisimbi in order to rob him of NZ 600,000; (l) Mrs. Wivine was murdered at Karisimbi by soldiers who dragged her from her home on 21 June; (m) on 15 June Eugene was murdered in Karisimbi in the course of a robbery; (n) on 6 July, 15 people were massacred by Alliance soldiers who fired on peaceful citizens (the names of some of those killed are: Assukiswa, Kivuila Mbuta, Mukendi, Kiwa, Tambwe Binasalima, Bongala Joseph, Sakameso Suamba and Albert and Mabale Amiako, the latter being a member of AFDL); Dieudonné Kitengé was publicly shot for having committed adultery; (o) two guards, one of whom was named Benjamin, were murdered by two Kinyarwanda-speaking soldiers on 4 September in Birere, Goma; (p) on 7 September, a Congolese military driver was murdered by ANC members in Goma, apparently in an attack against General Ndenga Mufu, also Congolese; (q) on 20 September, Anne Isita and her son Paul N'Sibu were shot by AFDL in Kapenda, Kwango, Bandundu, on charges of witchcraft; (r) On 15 November, soldiers killed Mputu Nkayi in Mai-Ndombe (Bandundu).

133. The summary executions carried out when the Alliance took Inshasa also belong in this category. No one denies that the city fell without a fight. However, according to the local Red Cross, some 318 bodies were picked up between 17 and 21 May, most victims were former members of the Zairian armed forces and ordinary criminals whom AFDL troops had caught looting. According to a report by VSV, some of the bodies had been mutilated.

134. Death by torture: There have been serious, substantiated reports of torture, including electric shock through a baton or club. The information gathered confirms that torture is used systematically. Cases of torture resulting in death include the following: (a) on 27 May, soldiers used live electric wires to whip two soldiers of the former FAZ accused of looting in Kinsuka Cimetière, killing one of them; (b) a little girl died after being beaten and tortured by soldiers in Kinshasa during the week of 26 May; (c) in April, Sherifwa Mamboko died as a result of torture in the jail set up in the Hotel Kabuis in Masisi; (d) another resident Mazinga died in April in an AFDL jail in Kisangani after being hit more than 250 times with a club; (e) in March, a man called Matalo died in Goma in similar circumstances; (f) a Mrs. Mobolo Mukpele, who had been accused of witchcraft, died as a result of torture; (g) on 22 May, a detained former member of the Civil Guard had his legs and hands cut off and was then burned alive; (h) also in May, Bokele wa Foka died in a jail in Isangi as a result of ill-treatment; (i) in June, a man called Bonone also died in Isangi as a result of torture; (j) in July, two detainees, Makundu Elomboakiti and Longala, died under torture; (k) the report by Bishop Kasukuti Ngoy adds the case of a Bafulira who died under torture when his eyes were gouged out and a stick was pushed up his rectum; (l) Paul Mukaya, director of the Ngonda primary school in

Mbuji Mayi, was beaten to death by members of AFDL; (m) Leon Boumbe, a former member of the FAZ, was tortured to death in Kapalata camp (eastern Province) for having arrived late at a presentation (early November); (n) three young Hutus died as a result of torture in Kinyongote prison (Nord-Kivu) on 6 November (paragraph 128); (o) on 9 December, a man called Mambueni died as a result of torture in Mbanza-Ngungu.

B. Right to physical and psychological integrity

135. Acts of torture of the kind described in the preceding section, but not resulting in death, were mentioned in reports to the Rapporteur. Many of them are recorded in connection with the violation of other rights.

136. The Rapporteur heard accounts such as the following: "they came to my home, stabbed my wife and took my radio and other property"; "when ... was returning home from his field, soldiers hit him and left him unconscious so that they could rob him"; "the boy was forced to show his student identity card and, when he did so, the soldiers said that boys were those most opposed to giving the Tutsi Congolese nationality, so they hit him and he had to be treated at a clinic run by nuns"; "they shot the girl because she complained when they tried to take off her jeans and those of two other girls"; "they entered the home of ... and hit his brother with a bayonet, robbing him of US$ 40"; "Mrs. Odette Biela Kanyanga, secretary of UNAF was beaten at Gombe by members of AFDL, who accused her of being the wife of an FAZ colonel; she had to be treated at the Médicis Clinic"; "on 15 June in Karisimbi, they entered the house, stabbed 16-year-old Marie Mungabuli and stole US$ 141"; "when the victims shouted for help, other soldiers entered, not to protect them, but to help the soldier who was attacking them, and stabbed the owner of the house"; "on 16 June in Karisimbi, soldiers entered the home of Mrs. ... with intent to commit a robbery, but they shot and wounded the owner of the house in the leg and ... in the head"; "in order to stop the torture, the detainees had to take their torturers to their home, where their brother had to give them US$ 300"; "after attacking Father Quetare, administrator of the seminary of the White Fathers, they beat him to get him to hand over the key to the safe, which they emptied completely".

137. Torture and other cruel, inhuman and degrading treatment or punishment: Some very common forms of torture and cruel treatment of prisoners, which demonstrate their systematic and widespread nature, were: beatings, known as the bastonnade, which was, according to a human rights activist, "reminiscent of the colonial era"; urinating in the mouths of prisoners; rape of women; electric shocks; and beatings using a plank with nails. Les Amis de Nelson Mandela claim that prisoners at the general staff heardquarters receive 60 blows a day in the morning, afternoon and night.

138. A typical example of torture occurred in the case of National Police Lieutenant Ambroise Kuta on 1 September. He was arrested, beaten, shot and wounded by soldiers who said that they were acting on the orders of the Minister of the Interior. He was taken by his captors to premises in the High Court, where they went on beating him until he passed out. It was a case of revenge by relatives of the Minster because of an investigation he was conducting into commercial activities in which they had an interest. Other particularly serious cases - of the 50 or so well-documented cases transmitted

to the Government - included cutting off with a bayonet the middle finger of the right hand of a man imprisoned for smoking marijuana on 19 May in Barumbu; slashing with a bayonet the chest of a youth accused of stealing a tyre on 20 May in Kalamu; breaking fingers with blows from a gun; breaking Dr. Kambale Matopo's jaw; administering violent blows to the belly of the former community leader of Mobango Itimbiri, Lukia Koko; the beating of Musumba Tembo Bakwanabaha in Butembo merely because he had been awarded the Order of the Leopard by Mobutu; the torture of Lieutenant-Colonel Vincent Bale on 27 August on PIR premises; the beating by six armed AFDL soldiers of Mateene Mushondwa, Butelezi Shabanyere, Banyanga Mwendaovyo and Masumbuko Muitira in their homes in Goma on 27 August; on 6 September, Mumbere Bihamba was beaten and stabbed by AFDL members in Karisimbi; Utshuku Mangala Germain was tortured by a jilted AFDL official for six days in Ubundi; on 20 September, Mr. Bokungu and his deputy were given 50 blows on the orders of Commander Masasu because they arrived at work late; Mr. Kasula was tortured for selling a newspaper which announced that UDPS had come to power; on 2 November, AFDL soldiers tortured 22 persons for several days in Kahe, Nord-Kivu; on 21 and 22 December, an ANR official, Freddy Libeba Baongoli, was arrested on charges of possessing weapons, which were actually service weapons, together with his brother Javier, his sister Marie Claire, his friends Patou, Kayembe and Jean Claude, his mother Wivine Baongoli and five other brothers and three other sisters. They were all tortured, some to the point of death. Freddy Libeba is still missing (see paragraph 129); Salumu Masudi and Ntumba Tshibumbu, accused of being members of the former FAZ, were arrested and tortured in Bandalungwa on 17 November; Ndongala Nzomambu Eugene was tortured (see paragraph 148 (g)).

139. Bertrand Lukando, CRONGD President in Maniema and member of the non-governmental human rights organization Haki Za Binadamu, was severely tortured after his arrest on 15 August (accused of being an "enemy of the people"), as was CRONGD Executive Secretary Ramazani Diomba, on the same day, as a result of which he required hospitalization. In these cases, the reason for the arrest was the charge of passing on information to the United Nations about massacres committed by Alliance Tutsis.

140. There was massive use of torture; 47 people in Goma were tortured for several days from 26 May onwards.

141. The systematic nature of the torture is revealed by what happened to a youth called Richard Mpiana Kalenga: arrested on 30 June, he was severely tortured, but released on condition that he gave the names of opposition students.

142. Cases of torture and cruel treatment of women are mentioned in the relevant section below.

C. Right to security of the person

143. It was stated in documents E/CN.4/1997/6/Add.1, paragraph 10, and E/CN.4/1997/6, paragraphs 186 and 187, that the arrival of the rebels had signified an improvement in the enjoyment of the human right to security. The PIR contributed to that objective.

144. Nevertheless, that impression is beginning to fade, although abuses have not, of course, reached the levels of the previous period, as the actions of many AFDL soldiers go unpunished. Incidents such as those mentioned in the sections on violations of the rights to life and to physical and psychological integrity and which were unrelated to the performance of professional duties are all too reminiscent of the looting and extortion carried out by the former FAZ. A mere curfew infringement constitutes sufficient grounds for the use of violence. People in Kivu who left the house to go to the toilet in an adjoining building (case of Mrs. Mango Mauziko) or who listened to the radio after 8 p.m. (case of Lubingo) received beatings. St. Charles parish in Lwanga, Bandalungwa, on 15 September, Kimbanseke parish, Evangelical Church of Witnesses of Christ, on 7 November, the diocesan house in Lisala on 7 November, and others were looted by soldiers, who stole valuable items. There is also insecurity in the countryside, as shown by the complaint filed by Kitomisa farmers reporting that AFDL soldiers regularly attacked their properties, stealing or killing their livestock. Similar incidents have been reported in Kitwit, Kibuba and Kimpese, which are very remote places. Over 100 complaints and reports of arrests or house raids, which were carried out on the pretext of looking for weapons or on allegations of protecting FAZ soldiers and ended in the theft of watches, radios, money, clothing, electrical items, television sets and so on, were forwarded to the Government, which did not reply.

145. Acts of this kind were also committed for purposes of political intimidation. For example: (a) the residence of the former Ambassador of Zaire to Rwanda was raided on 23 May by Alliance soldiers claiming to be searching for weapons; the soldiers took a television set, computer parts and a Mercedes Benz vehicle and, as usual, threatened to kill the owner of the house and fired shots into the air; (b) Professor Bayona Bemaya, former President of the now defunct National Electoral Commission, suffered a similar raid on 20 July; (c) on 5 June, the residence of UDPS President Vincent Mulumba was looted; (d) on 10 June, the home of Malamba Kassanda, UDPS President in Lingwala, suffered the same fate; (e) on 1 December, soldiers attacked Madeka's house in Kinshasa, beat him and his wife, and stole valuable items, including a car; (f) a former DSP official, Franck Wakwa Gerengbo, was persecuted by two of his former subordinates, now in the service of AFDL, out of revenge for having been reported for irregularities that brought them prison sentences (they escaped when Kinshasa fell); etc. There are countless cases.

146. Security is also undermined when the threat of reprisals is used to curb the exercise of the right to dissent and to take part in political activities, as AFDL did with, among others UDPS leaders Joseph Mukendi wa Mulumba and Bukasa Katshimuena, both on 20 July. Just as reprehensible are the threats made on 6 December by General Kifwa, a police inspector, who said that he would "cut off the hands" of anyone who dared disobey the law and that he would beat clergy who said prayers against the established power, since "politics are politics".

D. Right to personal liberty

147. Various incidents described in other sections (physical integrity, procedural guarantees and freedom of opinion, association and assembly) illustrate the precarious state of personal liberty in the Democratic Republic of the Congo. Anyone suspected of being pro-Mobutu or anti-Rwandan may have his freedom and other rights violated.

148. The Rapporteur learned of many cases of arrests on political, religious, cultural and trade union grounds of which the following were selected: (a) the leaders of the Mouvement national congolais/Lumumba (MNC/L) in Cohcolla, Ismail Tutw'Emoto Lubenga and Richard Dunia Luminangulu Badihaha, former comrades-in-arms of Kabila who were reportedly invited by him to return from exile, were arrested - or rather kidnapped - in Kinshasa and held on ANR premises on 1 July; (b) the ANR coordinator, Kibidini Clément, was detained without charge on 22 July; (c) MNC/L leaders Nepa Bagili Mutita and Pierre Welo were arrested on 5 June and taken to the military prison in Ndolo; (d) Pierre Lumbi, a former minister, was arrested without a warrant on 17 June at the Nganda conference centre for having hired an FAZ soldier as a driver: he was released three weeks later; (e) Etienne Tshisekedi was arrested at home on 26 June for having given a lecture at the university and was taken with his wife and family to the house of Commander Masusu, where he was reminded that all political activity was banned; (f) Colonel Ngbanda, Director of the Higher Institute of Commerce, was placed under house arrest on 7 June, but later released in response to a student show of solidarity; and (g) Jean Damasene Rwasibo, a teacher in Goma who had been a Hutu refugee in Katale in 1994, was arrested on 11 August 1997 and as of 4 September had still not been allowed to receive visits; (h) Z'Ahidi Ngoma, Chairman of the Forces du Futur party, was arrested on 25 November together with 10 other party leaders for holding a press conference to protest against the banning of a party seminar. Several of them were tortured and seven were released the following day. Many journalists were also arrested. Ngoma and the other detainees are being tried by the State Security Court; (i) Mathieu Kalele Ka Bila, an UDPS leader, was arrested on 24 October and accused of incitement to racial hatred for having protested about the strong Tutsi influence on the Government (he was denied food for two days); (j) Jean François Kabanda, also a UDPS leader, was arrested at a public youth demonstration in support of the CNS agreements and in protest at "foreign military occupation", also on 24 October; (k) Loange Arsène, military adviser to the Head of State, was kidnapped on 12 September, together with Commander Lumumba; they were released on 7 October and 29 September, respectively, without charges; (l) on 16 August, the students Jean Didier Mbaya, Guy Munipale, Alain Bolongue, Malitu wa Malwa, Mutomba Citoko, Tshamaba Kabeya, Edmond Bede, Isaac Monga, Bwernard Muteba, Nzoko wa Kenda, Jean Wazaza, Herve Mwepu, Eddy Mbende and Elie Malet were arrested in Lubumbashi for having taken part in a protest about the murder of a student by soldiers; (m) Célestin Shabani, former Minister of the Interior and associate of Etienne Tshisekedi, was arrested between 31 September and 2 October, without charges; (n) the lawyer and law professor Nyabirungu Murene Songe, OBMA legal director, was arrested without a warrant on 20 November on orders from the State Security Court; National Unity Party (PUNA) leaders Ndjate, Bozoma, Mongunga, Manyi, Mobuli, Limengi, Maslobu, Ekwese, Lekasomi were arrested on 17 November; (o) the pastor of the Pentecostal Church in Kinshasa, Théodore Ngoy, was arrested on 6 December; he

was released, but arrested again on 16 December for speaking about the personality cult in his sermons; (p) French citizens Claude Mercuri, Michel Granger and Laachari were arrested in Kolwezi on 8 December for trade union activities in support of workers in the GECAMINES State company; (q) Diomi Ndongala Nzomambu Eugene, Chairman of the Christian Democrat Party and the Front pour la survie de la démocratie (FSD), was arrested in Kinshasa on 10 December (see paragraph 138); (r) trade union leaders Anselme Mufwenge Kapay and Mayala were detained for several hours on 12 December after giving a press conference on the non-payment of government employees' wages.

149. Attention is drawn to the situation of the wife of Professor Omotela, who was murdered by AFDL (see paragraph 128); she was imprisoned for several days after the crime.

150. In many cases, detainees appear to have been released, but in fact they have not, since they are under house arrest. This is what happened, among many other examples, with the following former FAZ officers who were incorporated into ANC and underwent re-education in Kitona camp (see paragraph 40): Ando, Wale, Mazaba, Lokenyo, Ahono, Gere and Mahamba; they were arrested and then placed under house arrest simply because they belonged to the same ethnic group as Mobutu.

151. Another serious restriction on freedom is the ban on leaving the country for more or less lengthy periods. Monsignor Laurent Monsengwo, former Chairman of CNS and HRC-PT and Bishop of Kisangani, found himself in such a situation when he was prevented from leaving the country on 30 May to go to Europe; the ban was later lifted. Balanda Mikuin Liliel, President of the Supreme Court, was also not allowed to leave the country and had his passport taken away, thereby preventing him from serving as a member of the United Nations Administrative Tribunal (24 October). Joseph Olenghankoy, among others, was prevented from leaving the country on 10 October; the same thing happened to UDPS leader Valentin Mubake and to the former Vice-Chairman of HCR-PT, André Boboliko Lokonga, on 11 November.

152. Situation of the prison population: The situation of the prison population changed as a result of the war. In the first place, the statement by the leaders of the Alliance that it takes no prisoners - with extremely serious consequences in a war situation, as emphasized in the reports contained in documents E/CN.4/1997/6, paragraph 199, and E/CN.4/1997/6/Add.2, paragraph 16 - is matched in the area of ordinary crime: action to combat crime has largely consisted of killing the criminal. As examples, those cited in this report and those of the victims the day after the fall of Kinshasa should suffice: all the political and ordinary prisoners being held in Makala and Ndolo prisons were allowed to escape, but many were killed in the days that followed.

153. Senior officials of Mobutu's regime were arrested and taken to various places, such as the jail in the High Court, the office of the Supreme War Council, Hotel Invest at Congolese National Radio and Television (RTNC), the Gendarmerie Headquarters, jails in the Disciplinary Brigades and ANR and the residence confiscated from Isungu Kimaka in Binza Pigeon. It was reported that some of them were subjected to various kinds of torture and other cruel, inhuman and degrading treatment or punishment, such as beatings and having

their hair shaved off, and their conditions of detention were inadequate: filthy, squalid places without medical care, water, etc. They were finally transferred to the former Makala prison, except for Tshiongo Tshinbinkubula wa Tumba, who was taken, albeit belatedly, to a clinic because of his very poor state of health.

154. According to a documented APREDECI report, there are secret or clandestine prisons in which prisoners, especially Hutus, have been executed. It has been reported that they are - or at least were until some time after the end of the war - in Rutshuru (Albert National Park), Rwindi and Butembo (former DSP premises converted into a torture centre). Some reports state that prisoners who tried unsuccessfully to escape were shot.

155. Other reports state that, in Kasapa prison in Lubumbashi, some prisoners cannot leave their room and there are cells where the number of prisoners and their names are not known.

156. Food and health care for civilian prisoners in Kasapa and in Boma - and apparently in all the other prisons - are provided not by the Government, but by the churches, especially the Lutheran and Catholic churches, and by families, but this is not the case with military prisoners. In Boma, there is serious overcrowding, since there are only three dormitories for over 80 detainees.

157. Kinyongote prison in Nord-Kivu serves as a torture centre, and its first basement, intended for civilians, is constantly flooded.

158. In Mbanza-Ngungo prison in eastern Province, 3 of the 86 detainees have already died of malnutrition.

159. One sign of the deterioration of the system of justice is the fact that only 1 of 97 prisoners in Boma has been sentenced and all the others are awaiting trial.

E. Right to privacy

160. The Rapporteur received a good deal of evidence showing that letters sent to areas controlled by AFDL are checked. By way of illustration, the following message from Geneva is reproduced:

> "We are writing to you as relatives of victims, as they cannot do it themselves since either they are dead or their families are prevented from doing so by the climate of terror that reigns in the country. The postal services in eastern Zaire are not working and to send a letter from the Rwandan camps (such as Cyangungu) you have to have it read by a Rwandan security official and the same applies to sending a fax."

Many claim that they have to turn to people who are travelling in order to send letters and it is not easy to find someone prepared to take the risk.

F. Right to due process

161. Among the main guarantees of due process, article 14 of the International Covenant on Civil and Political Rights lists: (a) the right to be tried by an independent and impartial tribunal; (b) the right to be informed promptly and in detail of the nature and cause of the charge; and (c) the right to be tried without undue delay.

162. Although the statute for the judiciary envisaged in articles III, XI and XII of Constitutional Decree No. 3 sets forth the principle of the independence of judges, it actually makes it subject to the wishes of President Kabila, who can relieve judges of their functions and dismiss them by agreement with the Supreme Council of the Judiciary, which is not operational.

163. In practice, the independence of the courts has not been respected, as shown by the following examples:

The President of the Supreme Court, Balanda Mikuin Liliel, was dismissed with no explanation other than his connection with the former regime;

A military court was established by Decree-Law No. 19, thus only making matters worse: (i) it is not justice that is being pursued, but the need to complete operations to consolidate positions conquered by the 50th Brigade of the armed forces; (ii) it can try civilians, but under military rules of procedure; (iii) its decisions cannot be appealed against or contested; 13/

Mikobi Kalaam, President of the High Court of Haut Uélé, was deprived of his liberty for 12 days, on the orders of an AFDL commander who was annoyed at preventive measures taken regarding four vehicles which AFDL was using, but which belonged to someone else;

In Kisangani, a military commander unilaterally refused to carry out an enforceable sentence in favour of a Mrs. Meta Mukendi;

The Kisangani prosecutor, Basembo, was arrested by soldiers and civilian members of AFDL in May, on the basis of a vindictive accusation by a criminal;

In Likasi, John Kalala, Benôit Mbala and Raymond Ngoie, defence lawyers for the priest Courbon, were threatened with torture by the authorities if they continued to defend him;

The Attorney-General of the Republic denounced several illegal appointments of judges by the Ministry of Justice, which led to his dismissal.

164. These problems could become worse as a result of the announcement by the President of the establishment of another emergency military criminal court to try the "inciviques" and persons who attack the civilian population.

165. The courts have also failed to perform their constitutional function of applying the law. Errors and arbitrary decisions are such that the Kinshasa Bar Association found it necessary to say so publicly and protest about the unfounded and arbitrary nature of judicial decisions.

166. Justice is a two-speed mechanism: in Kinshasa, there is still a minimum degree of respect for the rules, but, according to all the reports received, there is no justice in the regions other than the political authority of AFDL, which orders arrests, searches and evictions, imposes and collects fines and even hands down penalties. Former practices also continue in the provinces, where it is quite common for litigants to have to pay for the proceedings.

167. Another example of the denial of justice is what happened in the cases of senior officials of the deposed regime, which have involved a series of abuses that also affect personal liberty and physical and psychological integrity. They have been held prisoner, some under house arrest and others already released, without any formal charge, provisional or definitive, being made against them or any declaration of their innocence being issued for months. Only one trial began in December (paragraphs 169 and 170).

168. Not even Congolese laws are being observed, since the scarce information made public - there are no judicial charges - appears to suggest that the charges typically involve offences under ordinary law (embezzlement of public funds and property, forgery, etc.), which means that they should give rise to ordinary criminal trials and that detention and release orders should be signed by judges competent under ordinary jurisdiction. Instead, such orders come from the executive branch (the Ministries of the Interior and Justice and even the Director of the National Information Agency) or else, although on this point the information is even more confused, from the State Security Court, which has absolutely no jurisdiction in the matter ratione materiae.

169. It is stated that some of the persons in question, and others, are suspected of having acquired property illegally and that, in many cases, it was confiscated without proceedings of any kind, so that they did not enjoy the right to be heard by an independent and impartial tribunal (Universal Declaration of Human Rights, article 10, and International Covenant on Civil and Political Rights, article 14). This situation was already reported by the Special Rapporteur in his report (E/CN.4/1997/6/Add.2, para. 31), where he recounted being told that "anyone who owns property is a Mobutu supporter" and is liable to have such property confiscated by AFDL. The homes of such persons are occupied directly by Alliance officers or officials, or even by President Kabila's personal physician. There are an enormous number of complaints of this kind and, although the informal accusation is that such property was acquired illegally with public funds, not only has this not been demonstrated, but there has not even been any attempt to so do before the courts. President Kabila created the Improperly Acquired Property Office (OBMA), in a further snub to the National Sovereign Conference, which was already doing the work assigned to OBMA, only on 16 July, when the property of former Minister Tshibanda, Mokolo wa Pombo, Pay-Pay, Seti Yale, Moleka Nzulama, Max Munga, Nene Nzimbi and others, as well as virtually all the apartments in the Wagenia building, had already been confiscated. OBMAs activities have been totally illegal, since there are many complaints that it has ordered confiscations of private property, without explaining why it was deemed to be "improperly acquired", and that it is turned over to Alliance executives. 14/ The abuses by OBMA were recognized by President Kabila himself, but the first administrative and judicial remedies appear to have been adopted only in December (the trial of Kikunda Ombala began on 6 December, but was suspended until January). The President gave until

7 January for those who appropriated the property of others to return it and some buildings, such as Hotel Lafayette in Kinshasa, were returned. However, it was reported that not all the Ministers appointed in early January 1998 gave back the property in their possession and that those who did so did not include all the property.

170. Some of the persons concerned are or were: Ilondo Leny, Jiby Ngoy (released), Cleophas Kamitatu Massamba, 15/ Kachama Mangalu, Kasereka Kasai, Kigata Ngina, Kikunda Ombala, Kiythima bin Ramazani, Kundo Kuangele, Sdelemani Mwanayile, Umba Kyamitala (released), Luamba Katanzi, Pierre Lumbi (released), Malu wa Koni, Ivette Mangaya (released), Mavinga (released), Mukamba Kadiata (released), Mukamba (released), Makopa Mukumba (released), Djumbambele Mongbondo, Patricia Mongbondo (released), Mashagarusha (released), Mwanzaka Mata, Ndiang Kabul, Nlandu Kusala Khasa, Amuri Tabakombe, Bahata Lukuebo, Bamba Ganga, Barabutu (released), Baramoto (lieutenant), Bemba Salaona, Bokata W'Ekila, Bekazwa, Bofale, Bofassa Djema, Boonda, Bosembo, Bossekota Watshia, Bongombe Bohulu, Buhenda wa Mushaba, Bwabwa wa Kayembe, Djamboleka L'Oma, Fundu Nkota, Essolomwa Eya Linganga, Nzazi, Omare Lea Sisi, Tshiongo Tshibinkubula wa Tumba, Tsibwabwa Ashila Pashi, Vangu Mambweni (released), Tembesa Donat, Zumbu, Kumassi Mantiuka, Ali Kalonga, Mrs. Mondonga, Clement Kibinda, Ambago Tulu, Baruti Ngbanda and Kyungu wa Kumwanza.

171. There have also been violations of articles 8 and 9 of the Universal Declaration of Human Rights concerning the prohibition of arbitrary arrest and the right to an effective remedy by a competent tribunal for violations of fundamental rights, and of article 9 (4) of the International Covenant on Civil and Political Rights, in that a remedy to safeguard freedom has been denied. In exercise of this right, nine of the people concerned requested a ruling by the Attorney-General before the Court of Appeal in Kinshasa on the illegality of their detention (19 August), but the Attorney-General did not even receive the petition.

172. Victims of this type of abuse include not only known leaders of the former regime, but also businessmen. Crispin Luboya, a businessman in Butuke, inquired in Kinshasa whether his business would be privatized. A few days later (12 October), he was kidnapped by soldiers and imprisoned in the former SARM jail in Kinshasa, without any charge. The French citizen Jean-Marie Bergesiot, who had lived in the country for over 20 years, was arrested and taken to the ANR jail simply because he had video cassettes of the massacres south of Biaro. A Belgian citizen, Antoine Declerc, who owned a digger which had been rented by AFDL to remove bodies and subsequently confiscated by AFDL, was also arrested. Both arrests took place on 10 September. Belgian businessman P. Claes, who was arrested on the border between the Democratic Republic of the Congo and Zambia on 19 August on a charge of unlawful enrichment and transferred to Kinshasa, has been unsuccessful in his judicial actions to regain his freedom, even though he has not been tried.

173. General Muland and the 10 surviving Katangese gendarmes who gave themselves up with him on 19 May at the then seat of the Government in Lubumbashi and who were held until 28 December, much of the time incommunicado, have also not been tried. General Muland was listed as

missing for nearly four months. The soldiers Kinene Nsimba, Kimputu and Diakota, who were imprisoned in Lubumbashi even though their innocence had been recognized, have also not been tried. Neither, of course, has the arrested military leader Anselme Nasasu Ningada.

174. In another example of the denial of justice, the very serious and systematic human rights violations committed during Marshal Mobutu's dictatorship have not resulted in judicial proceedings with all the guarantees that this implies, when that was one of the things that democratic sectors had hoped for most.

G. Right to freedom of opinion

175. In earlier reports, it was explained why there was no freedom of expression or opinion in Zaire and, above all, why the people of Zaire did not enjoy the right to information , despite the existence of independent newspapers. It was concluded that, in such circumstances, the planned elections would not be free. 16/ The change of regime made things worse.

176. It is true that newspapers continue to circulate freely, but under the same constraints as noted in previous reports: they are available only in Kinshasa, they contain little news, they have limited circulation, they are published only in French, etc. However, various steps taken by the new authorities reveal open contempt for the press and an obvious effort to prevent the free expression of ideas and the right to information. The Minister of the Interior has said as much: "more than 80 per cent of what the press says is false".

177. The authorities' wariness of freedom of expression is reflected, inter alia, in (a) the high accreditation fee (US$ 100) which the foreign press is required to pay; (b) the creation of an inspectorate for the public audio-visual media, clearly with censorship in mind; (c) the call by the Minister of Information, Raphael Ghenda (Commissioner at the time), on 19 May to the public press to "receive instruction from AFDL", which simply meant that any reporting must be approved by AFDL; (d) the expulsion of independent journalists from the public media, accused - rightly or wrongly, it hardly matters - of being Mobutu supporters (Francine Makoko, for example); (e) the frequent confiscation of equipment during public demonstrations; (f) the requirement that secular private radio stations pay 40 per cent of their revenues to AFDL (20 per cent for religious stations); (g) the advertising ban on private radio stations; (h) the requirement that regional radio stations broadcast news and announcements from the Alliance twice a day; (i) the frequent requirement to reveal sources or issue denials, as documented by the non-governmental organization Médias Libres, Médias pour Tous; (j) the requirement that news programmes should be approved by the Alliance, as apparently happened in Lualuburg; (k) the threats by the Minister of the Interior on 8 November to take legal action against what he called insults and defamatory articles; (l) the removal of newspapers from Kinshasa airport so that they do not reach the regions; (m) the suspension of the televised press review, except for news about and opinions of senior members of the Government; (n) the ban by the Minister of Information and the Press on 30 November preventing FM radio stations from broadcasting information from abroad that is critical of the Government, and the refusal to allow

journalists from State-run media to work as foreign correspondents; (o) the arrest of persons who sell newspapers in the street, in order to intimidate them; (p) Kabila's "recommendations" that the State-run press should "be revolutionary" (10 November).

178. One-party totalitarianism reaches its height in public television and radio and, in Kivu and Maniema at least, private radio stations have been taken over by the State: programmes praising the new authorities are broadcast non-stop (President Kabila is presented as the man of liberation, reconstruction and development) and AFDL alone has access to those media or, rather, the public media and the voice of AFDL, while no news, announcements, interviews or opinions of dissident sectors are allowed.

179. No segment of civil society, political party or NGO has access to the public media or any outlet to express itself, a situation which could lead to violence as an alternative form of expression.

180. in addition to this overall situation, there are cases of direct repression: (a) foreign journalists were humiliated at the Intercontinental Hotel in Kinshasa on 25 May by members of AFDL; (b) on 8 September, Polydor Muboyayi Mubanga, editor of the independent newspaper Le Phare, was arrested and held incommunicado in Kinshasa for having announced the establishment of a new Special Presidential Division; he was released without charges on 18 November; (c) on 7 May, Matadi Mandefu, editor of La Voix du Peuple in Beni (formerly Radio Mungano) was arrested and held for 24 hours, apparently because his articles were not to the liking of the new authorities; (d) also in Beni, Chroniques des Droits de l'Homme, the prestigious programme of the local branch of AZADHO, has been banned since March; (e) on 22 May in Kinshasa, cameraman Betu Kumesu was attacked and tortured for filming a student demonstration for democracy; (f) on 25 May, Alliance agents confiscated from journalists covering a student demonstration all the video cassettes and film they had used; (g) in Lubumbashi, Lenge Kabeya, editor of Le Devoir, was issued a warning by AFDL for having reported on the transfer to Rwanda of Congolese public property; (h) in Kisangani, a journalist was forced to present himself daily to the authorities for having reported the same thing, except that the destination of the property was Uganda; (i) Ali Kalonga, director of the Congolese Press Agency, was arrested for having reported that an Alliance minister was under house arrest; (j) the daily newspaper Le Soft was attacked and ransacked four times and its editor had to go into exile; (k) Kinyongo Salek, a journalist with Le Potentiel, was abducted from the Palace of Government itself on 1 July and threats were made against him; (l) on 23 August, the journalist Michel Luya (Le Palmarès) was arrested; (m) on 28 August, there was an attempt to kidnap Modeste Mutinga and Timothie Tshidibi (Le Potentiel); (n) in Butembo in July, two journalists were prosecuted for criticizing the system of justice, and 10 journalists, including Kamanda Muzembe Fidèle Musangu (Le Phare), Jonas Kota (Le Potentiel), Wanwana Baudoin (La Semaine du Reporter), Bonane ya Nganzi, Julien Lubunga (BBC Swahili correspondent), Mosi Mosi, Kasongo Denis and Beke Eric, were arrested on 25 November and taken to a military base for having covered a press conference of a top Forces du Futur leader, several of them were tortured; (o) on 27 September, André Ipakala Abeihye Mobiko was summoned to the National Security Council and reprimanded for an article in La Référence Plus; (p) the journalist Bosange Yema was detained for 48 hours

on 18 November on a charge of being an agent in the service of the investigation team of the United Nations Secretary-General; (q) the BBC Swahili correspondent Mossi Mwassi was arrested by ANR agents on 4 November for having maintained contacts with former Commander Masasu; (r) on 20 October, the Government confiscated the equipment of the newspaper Elima, putting all the journalists out of work and leaving the community without a newspaper; on 24 December, the soldiers in charge of this equipment were caught selling it; (s) an attack was made on 24 November against the journalists Lussamaki Okita and Marcelin Manduakila of Forum des As; (t) on 8 November, soldiers attacked the home of the production director of Le Soft, Raphaël Kidumbu, who was beaten up, together with his brother; (u) an attack, preceded by threats, was carried out against the home of the journalist Fredy Loseke Lisumbu-La-Yayenga of La Libre Afrique for articles on the origins of the Minister for Foreign Affairs, Bizima Karaha (8 November); (v) on 10 December, the property of the magazine Le Moniteur de l'Economie was confiscated on the pretext that it belonged to the State; (w) Pontien Tshisungu of RTNC was arrested on the orders of Minister Kongolo for having said that his group had been attacked in Rwanda; (x) on 21 December, Jean Tshipamba Nzala wa Kavuambu and Frédéric Nduaya of Le Potentiel were arrested and questioned on PIF premises; (y) Kidumbu Mpese of Le Soft was arrested for several hours as a warning against selling Soft International in Kinshasa (24 December).

H. Right to freedom of association

181. Human rights and development organizations: The task of human rights and development organizations has been considerably affected by the new regime. They appear to be tolerated in Kinshasa, but not in the interior.

(a) After the fall of Bukavu, the leader of the Banyamulenge, Ruhimbika Muller, organized an NGO Coordinating Office to replace the Régional Council of NGOs elected by the NGOs themselves. NGO activities were subject to authorization from Muller, which had to be requested one week in advance. Sometimes, a Banyamulenge agent or "facilitator" had to be present at any meeting. Statements concerning human rights had to be submitted in advance for approval. Twenty per cent of foreign funds and all four-wheel drive vehicles had to be turned over to the authorities to support the war effort. The orders were: "There'll be no more talk of human rights. We're at war." And, of course, several NGOs, such as the Société des coopératives pour le développement de Fizi (SOCOODEFI/Fizi) and Action pour le développement intégré de Kivu (ADI-Kivu), were looted.

(b) In Nord-Kivu, the Governor said much the same thing to a number of people, namely, that "non-governmental organizations will remain under the control of the new authorities".

(c) In Kisangani, NGO activities are very restricted. The AFDL authorities told an NGO delegation: "We won't suspend your activities, but any public demonstration must be authorized. You must be careful not to interfere with the Alliance, because our troops are still hot-headed."

182. On 28 August, the Minister of the Interior, Mwenze Kongolo, ordered political parties, NGOs, friendly societies and ethnic and cultural

associations to cease their activities; a decision that was ratified by President Kabila on 2 September. On 2 October, Minister Kongolo ordered the international humanitarian agencies to suspend all their activities and leave Goma, and on 7 December, five international NGOs (World Vision, Concern, Merlin, Australian Aid Programme and Italian Cooperation (COOPI)) and two domestic NGOs were suspended.

183. On 26 October, a council of ministers ordered that international development cooperation through NGOs would henceforth be channelled directly through the Government. In November, the Government cancelled operating permits, although they could be renewed.

184. In addition to violations of the rights to life, physical integrity, freedom of opinion and expression, security of person and others, some examples of acts of repression against NGOs are: (a) The President of Les Amis de Nelson Mandela (ANM), Roberto Ilunga Numbi, was summoned to AFDL headquarters (note: not to the Government), where he and his Vice-President were questioned for more than five hours for allegedly insulting President Kabila at a human rights study meeting on 25 May, and for saying that there were foreigners in the Government of the Democratic Republic of the Congo and that AFDL had no respect for democracy; the organization's activities were suspended from that time by AFDL (not by the Government) and all its documentation was confiscated, although it was later returned; the lives of its President and Vice-President were threatened; (b) many foreign NGOs were forced to contribute to the war effort by caring for or feeding soldiers; (c) VSV and AZADHO received various kinds of threats, to the point that the latter's President, Guillaume Ngefa, was forced to seek refuge abroad; (d) William Kalume Lualab, of VSV, was arrested on 28 June and held incommunicado; (e) the same thing happened to Laurent Kantu, President of Cadres pénitentiaires, who was arrested in Kokolo camp simply for making inquiries about other prisoners; (f) Justin Mubikayi, Secretary of the Comité pour la démocratie et les droits de l'homme (CDDH), and the Saint Albert parish priest, who were showing a pacifist film (Children of Soweto) in civic education programmes, were arrested and questioned by Alliance members who considered that the film was an incitement to rebellion against the regime (28 July); the film was confiscated; (g) Bulambo Katambo Ambroise and Didi Mwati Bulambo were arrested on 6 May by a Rwandan commander for requesting permission to publish the CADDHOM newsletter Mwangaza; in addition, their Belgian-donated motorcycle was confiscated; (h) Bertrand Lukando and Ramazani Diomba, of CRONGD/Maniema, were arrested and tortured in August (see section on torture); (i) Didi Mwati was rearrested on 23 August on orders from Christian Rwena, head of AFDL, and released 22 days later after having suffered horrendous psychological torture which made him seriously consider suicide; the only possible reason for his arrest - which was never explained - was his courage in denouncing abuses and CADDHOM's dynamism and credibility; (j) two other CADDHOM members, Kylosho Kyalondawa and Donatien Mazombi Mutekulwa, had to seek refuge from an imminent threat of abduction; (k) between 1 and 3 November, soldiers under the command of a Katangese civilian on three occasions overstepped their authority and searched the premises of La Voix des Sans Voix, where they beat and tortured its President, Floribert Chibeya, and his assistants Dolly Ibefo, Eugène Mutombo, Honoré Kapuko, Mbongo Haroun, Olivier Kunga, Léon Kasongo and Flavie Lusikila. Their pretext was that a court case was still pending between the heirs of the

building's owners; (l) on 23 November, the Secretary-General of the National Centre for Human Rights (CENADHO), Roger Nsala Nzo Badila, was arrested in Kinshasa without any explanation on orders from the Public Prosecutor; all the organization's premises were searched and all its documents confiscated; (m) on 10 November, the premises of the Committee of Human Rights Observers (CODHO) in Kinshasa were searched and its documents confiscated by the Presidential Security Service, and three nephews of the organization's President, N'sil Luanda Shandwe, were arrested; the reason was a letter sent to the investigating team appointed by the Secretary-General of the United Nations to investigate the serious violations of human rights and humanitarian law allegedly committed in the Democratic Republic of the Congo (former Zaire) since 1 March 1993; (n) in November, the President of the Ligue pour la conscientisation des électeurs (LICE), Alberto Kawumbu, was held under arrest without charges for five days; at the end of November, at a meeting between NGOs and the Minister for Welfare, the Minister's administrative adviser warned a senior member of the women's and children's department of AZADHO that "all the problems between the Government and the United Nations are the fault of Guillaume Ngefa (AZADHO's President), so he'll have to wait 32 years to come back here, by which time he'll be dead"; (o) on 26 November, Malbertine Tshituka, the President of the NGO Eveil de la Femme was arrested; she was released some days later without charges being laid; (p) Lambert Elongo Engungu, President of Droits de l'Homme au Sankuru, was arrested in November after being informed on; (q) the headquarters of Héritiers de la Justice in Bukavu and the home of its President, Raphaël Wakenge, were searched for documents on 8 November; (r) Jean Baptiste Makoko, treasurer of the Groupe Amos in Kisangani, was arrested and tortured on 21 December by soldiers from ANC.

185. Many NGO premises have been looted and the confiscated property used by ADFL without restrictions. Even property donated by foreign cooperation agencies to human rights or development organizations is used publicly by the confiscators, as in the case of GRAFBAF. In Kinshasa, a vehicle was confiscated from the Centre Oecuménique pour la Promotion du Monde Rural (COPROMOR) in the last week of May, and the same thing happened to the African Institute for Economic and Social Development (INADES) in Kikwit; in Nord-Kivu, World Vision and CARE facilities were looted. Similar acts were carried out against the Regional Council of Development NGOs (CRONGD)/Maniema in Makiso on 27 August.

186. Other associations: In addition to political parties and human rights and development NGOs, the work of other associations has been affected. The President of the Sud-Kivu Chamber of Commerce was ousted and replaced by an American businessman who had cooperated financially with the rebels; the activities of the Congolese teachers' union were suspended by order of AFDL on 9 June when it tried to hold a meeting. The same thing happened to other unions such as SYCO and FENECO.

187. The plan, announced on 31 May, to set up AFDL committees in State and private businesses and services - as has already occurred in the Directorate-General of Taxation - is not only intended to create a parallel, ideology-based union movement, but may also become an unacceptable vehicle for betrayal and informants.

I. Right to freedom of assembly

188. All demonstrations have been prohibited since 19 May, a ban that was renewed on 26 June and extended on 28 August to demonstrations held in private venues. Nonetheless, political parties, trade unions, students, journalists and other organizations stage peaceful demonstrations which are suppressed violently, as in the previous era, resulting in death, injury and detention.

189. The violence with which demonstrations are suppressed cannot be blamed on excesses on the part of middle-ranking members of the AFDL police. It was President Kabila himself who, in referring to demonstrations in Bukavu and Maniema in June, warned that if such demonstrations continued, he would have participants shot, adding: "I'm going to impose a bit of discipline."

190. In order to avoid demonstrations, the new authorities prohibited vigils for the victims of the massacres that occurred at the end of May in Uvira. The vigils were to have taken place in private, but the authorities ordered the bodies to be buried immediately. This attitude also reflects utter disregard for the indigenous population, who customarily hold wakes lasting two or three days for their dead.

191. The following is a partial list of peaceful public demonstrations that have been violently suppressed: (a) on 15 May, more than 100 student demonstrators were detained and taken to Kalolo camp; (b) on 28 May, at a student demonstration demanding an end to foreign intervention, several students were injured; (c) a student demonstration on 9 June demanding the release of the Director of the National Institute of Commerce; (d) UDPS demonstrations on 20 and 30 June, at which 18 people were arrested; (e) a UDPS and PALU demonstration on 25 July, at which two people were killed and more than 48 arrested, several of whom were tortured; (f) on 15 August, at a UDPS demonstration commemorating Tshisekedi's appointment as Prime Minister in 1992, 20 people were arrested and many of them tortured; they were released two months later; (g) on 26 August, a student, Makolo, was killed at a demonstration in Kinshasa; (h) a few days later, people were prevented from attending a ceremony at the university to mourn Makolo's death; (i) many arrests were made at a UDPS demonstration which was broken up in Bandalungwa; and (j) on 17 January 1998, a UDPS gathering to commemorate the new year at the home of its leader Tshisekedi was broken up and 11 people arrested; the home of its Secretary-General Adrien Phongo was attacked (seven persons were released the next day).

J. Economic, social and cultural rights

192. It is too soon to evaluate the efforts made to gradually ensure the enjoyment of economic, social and cultural rights, on account of the war effort and the continuing lack of a relevant government plan.

193. The galloping inflation inherited from the previous regime was reined in the months that followed the AFDL triumph, although it started to rise again towards the end of the year, as a result of which there was no improvement in living conditions, particularly those of wage-earners.

194. On 25 June, civil service salaries were paid for the first time since the new Government came to power, on the basis of the nominal salaries paid in Kengo's time, but were later stopped again. The civil service unions protested about this payment, claiming that there had been discrimination in favour of the most senior civil servants. In any event, it is surprising that the authorities never appear concerned about this dramatic problem, and do not even feel pressurized by the succession of strikes. Thus is an instance of failure to fulfil the obligation to adopt measures to satisfy economic rights.

195. In education, there is justified concern about the military presence in the universities. Student unrest has been exacerbated by the fact that the Ministers of Education and Finance announced on 8 July that students or their parents would have to continue to pay their share of the cost of registration, maintaining an odious system that has prevented many students from completing their studies. This situation prompted lecturers to go on strike from 4 to 18 July but on 29 July the Minister of Education announced that, as of the following academic year, education would be free.

196. There has also been repression in schools and universities. The Rector of the University of Kinshasa warned three students that if they insisted on inviting Tshisekedi, they might be expelled from the university.

197. As regards health, the decline in incomes as a result of the delayed payment of wages has led to a resurgence of traditional medicine. Medicines are too expensive for most people.

198. The most serious epidemics were: monkey pox in Sankuru, Kasai Oriental (it could have easily been avoided by the adoption of adequate preventive measures); urinary bilharziasis in Kisenso in November; and cholera at the Kapalata military training centre (see paragraph 40).

199. In November alone, 139 unidentified persons were buried in Kinshasa.

K. Situation of children

200. No definite policy towards children is discernible. However, the complaint, already made in last year's report, that children have been recruited by AFDL for armed combat, is a source of great concern. This year, similar complaints were made, and there was even mention of 11-year-olds carrying heavy weapons and engaging in combat. Because of their lack of training and their ability to handle weapons, these child soldiers, known as "kadogos", have been corrupted and have participated in robberies and killings. In the absence of official reintegration programmes, UNICEF has started up a programme for these children, who carry on stealing, and even engaging in armed robbery after they have been demobilized.

201. The absolute disregard shown for children's lives in the attacks on the refugee camps and the blocking of humanitarian assistance to them constitute blatant violations of the rights of the child.

L. Situation of women

202. It is not yet known what the new Government's gender policy will be. However, the limited number of women in the Government is striking: one woman minister (no longer in office), Justine Mpoyo Kasa Vubu (Civil Service), and two deputy ministers, Julina Lumumba (Information and Propaganda) and Mululu Mamboleo (Social Affairs).

203. According to a study by the Mouvement des Femmes pour la Justice et la Paix, women have suffered most and have the highest expectations, because of their less confrontational and belligerent attitude. The Rapporteur shares this view and looks forward to greater participation by women in the future, of the kind now evident in the NGOs.

204. The Rapporteur learned of the existence of a plan by women's organizations to improve the situation of women in society (amendments to the Civil and Family Codes), but apparently the Government has yet to discuss it.

205. Doing as they please, for example in the way they dress, has been severely punished. There have been innumerable reports, some of which are referred to in the preliminary report (A/52/496, para. 205), of young women in jeans or trousers being beaten by AFDL soldiers.

206. Cases of violence, including sexual violence and torture, against women have been frequent: (a) a Mrs. Chryson was tortured on 2 April after being detained because of an accusation made by a woman friend of an AFDL member; (b) on 2 April, 12-year-old Gisèle Fatuma Cheka was raped in Camp Dumez, Kitambo; (c) Badibanga Bella Liliane was detained, beaten and sexually abused on 10 July by 17 AFDL members who accused her of having been the mistress of an FAZ soldier; (d) on 3 May, 18-year-old Solange Machozi Baeni was raped throughout the night by AFDL soldiers on the road from Masisi to Goma; (e) two women who requested anonymity were raped by soldiers in Lubumbashi on 13 June; (f) in July in Kinshasa, a girl was kidnapped and held for four days by soldiers who raped her repeatedly; (g) seven girls suffered similar assault on 9 August at Masambo (Ruwenzori); (h) on 1 September, seven AFDL soldiers raped the daughter of the Salata district commissioner, apparently for political motives; (i) it was reported that Congolese women were sexually assaulted at Kitwit in Bandundu province by soldiers described as being of Rwandan appearance or Portuguese-speaking; (j) according to other reports, ANC soldiers killed six women, one after the other at Katale, in an apparent attempt to intimidate the local population; (k) Arlette Fula and Charlotte Ndongi, sisters of the political leader Diomi Ndongala, were raped when he was arrested (see paragraphs 138 and 148 (q)); (l) the wife of a missing prisoner, Matungulu Bareke, was attacked four times in Kibuma to make her stop looking for him.

207. According to a report by NGOs in Kasai Occidental, since AFDL has come to power there have been 24 cases of women being raped by soldiers.

208. Women's organizations were also affected. In one instance, Mrs. Tshituka, a coordinator of women's associations, was arrested without any

explanation being given and taken to Makala prison after having participated in a meeting between women's organizations and the Minister for Social Affairs.

209. The Rapporteur believes that the question put to the deposed Government by the Committee on the Elimination of Discrimination against Women as to "whether effective measures had been taken to protect the physical and moral integrity of refugee women and of all women victims of armed conflicts" should be answered by both the Governments that were in power in 1997. No measure to that effect has been taken.

VIII. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

1. The democratic process

210. During the last years of Marshal Mobutu's regime, there was a budding transition to democracy, encouraged by civil society, the churches and non-governmental organizations, but discouraged by the man who had been in power for 32 years and his court, and for the most part not encouraged by the so-called political class. That process had brought about gains in the areas of social organization, freedom of expression and a multi-party system, among others, which, with advances and setbacks, could be considered to have been consolidated. There was also the national project duly agreed at the National Sovereign Conference (CNS).

211. The rebel movement's popularity could, for the most part, be attributed to the rejection of the dictatorship and to the hope that AFDL would implement the CNS agreements, although AFDL always sent out mixed signals.

212. Unfortunately, the record of the first few months seems less than satisfactory. If, by a democratic regime, we mean one in which human rights are respected, power emanates from the people through free elections, there is a separation of powers, the law is enforced by the authorities, there is equality before the law, the armed forces and police are at the service of everyone, the courts perform their functions independently, the political parties express themselves freely and there is freedom of information, then this report shows that none of these conditions is being met.

213. The regime has eliminated the civil rights to life, liberty, physical integrity, etc.; the rights of political participation have been suspended, except for a party which identifies itself with the State; there are no measures to ensure the enjoyment of economic, social and cultural rights; announcements of free elections are contradictory and no effort is being made to put them into effect; President Kabila exercises executive and legislative power, and judges and magistrates are answerable to him; all laws which contradict the new precepts laid down by the President have been repealed; one ethnic group predominates over hundreds of others, often resulting in conflict; the mere suggestion that someone is branded a Mobutu supporter, guilty of genocide, a Hutu or a Bembe, among other things, results in his being discriminated against; the new armed forces and police are at the service of the political and ethnic power group in the Government and commit

abuses against opponents and "enemies"; the courts are subordinate to the executive branch; there is no freedom of information on radio and television, the most popular public media.

214. A mentality of victors and vanquished has taken hold, aggravated by the perception that the former include foreigners, a situation which causes a strong sense of humiliation.

215. There has been no effort to ensure justice by trying those responsible for violations of human rights and international humanitarian law. Not only the losers in the wars and conflicts should be tried, but also those among the victors who committed war crimes or crimes against humanity.

216. The Alliance refuses to admit that the liberation was not due to its efforts alone, that there were constant demands for democracy - and much blood spilt in the process - over the past seven years. The citywide strikes launched CNS and relaunched it every time it was brought to a standstill. The independent press, within the limits imposed on it, disseminated ideas of freedom, and human rights organizations taught the value of dignity. None of this is acknowledged.

217. The new State structure, based on an omnipresent State-party (although this is denied), which is overwhelmingly dominated by two ethnic groups - the Tutsi and the Katangese Luba, the first of which is not considered by the population as being Congolese, the absence of a short, medium or long-term democratic project, and the fact that there is no organ capable of controlling the exercise of power all lead the Rapporteur to conclude that the Congolese people do not enjoy, and will not enjoy in the foreseeable future, the human right to democracy.

2. Human rights

218. The Alliance's arrival had some positive aspects, such as an end to extortion and looting, increased security in the cities and a drop in ordinary crime.

219. However, there are also the negative aspects described in this report: first and foremost, violations of the right to life, in the form of political murders, police brutality and disappearances; the use of torture and other cruel, inhuman or degrading treatment or punishment; attacks on the dignity of women; and restrictions on the freedoms of association (especially political parties and NGOs), opinion, expression, assembly, etc.

220. The conclusions of the report of the Lutheran Church, drafted at the request or with the endorsement of AFDL, do not differ substantially from those contained in this document, in that they confirm that there have indeed been human rights violations and that these were continuing, at least when this report was written. The number of victims is unimaginable. The situation is very complex and more than one sector is to blame. Inter-ethnic conflicts have in fact been going on in Kivu for years.

221. The truth is that, unless they win the human right to democracy, the Congolese people will be unable to enjoy all their civil, cultural, economic, political and social rights.

222. In the view of AFDL - as well as of a number of Governments with responsibilities in the region, the Alliance needs a grace period to set up what is called "a good government". That was also the case with Mobutu, and the experiment went on for 32 years. However, for AFDL the notion of good government seems to be limited to making a few improvements in the towns or to bureaucratic controls at Ndilli airport. In the view of the Rapporteur, "good government" means first and foremost respect for human rights and democracy. Governments that violate their international and moral obligations with regard to human rights and freedoms, that refuse internal checks, are fundamentally bad governments.

223. The Government does not take any blame or admit to any wrongdoing. It is always the others, the discredited, who are in the wrong. Humanitarian agencies are presented as protecting those guilty of genocide, and non-governmental organizations, the press, the political parties, the international community and the Special Rapporteur are all branded as liars.

224. The present Government, like its predecessor, refuses to cooperate with the mechanisms of the Commission on Human Rights or with those established by human rights treaties. While such conduct may be viewed with tolerance, given its short time in power and the conditions which it faced when it came to power, such cooperation should be resumed soon in order to win the international community's confidence, in a climate of respect which has until now been lacking.

3. The national peace process

225. AFDL has failed to advance the peace process, if it ever really intended to do so. The country is more sharply divided than before, inter alia in its armed forces: between AFDL and former FAZ members, between Rwandans and Katangese, etc.

226. The ethnic conflicts have not been settled, nor will they be settled until the State commits itself to a policy of reconciliation. In the renewed conflict in Nord-Kivu, the State, instead of acting as mediator or peacemaker, has aggressively taken the side of one of the ethnic groups.

227. Unfortunately, the security which the victorious forces had imposed on the conquered cities has been considerably eroded by those same forces. This is confirmed by the attacks on property and security described in this report.

B. Recommendations

1. To the Government of the Democratic Republic of the Congo

(a) The democratic process

228. The Government should immediately begin the process of building democracy. This process is not a matter of choice for the Government, nor is

it a gracious concession to the international community; it is an unavoidable obligation to the people. To this end a dialogue should begin today with the democratic forces that made it possible to end 32 years of dictatorship. The text drawn up through the collective efforts of CNS cannot be disregarded; it is not written in stone, but it is a very sound foundation. No Congolese should be excluded from the process on grounds of ethnic origin, politics, religion or gender. Conversely, no one who is not Congolese should be entitled to participate.

229. Electoral timetables should be agreed upon, not imposed, and be realistic, not demagogic; they must not be used as pretexts for never achieving the goal.

(b) The structure of the State during the new transition

230. The transition cannot progress without an effective separation of powers and a fully functioning multi-party system. The State cannot be exempt from controls. The process begun by CNS represents a minimum which cannot be ignored. The guarantee of pluralism is incompatible with the existence of a single party, and even more so with a State party, such as the former MPR.

(c) Human right to justice

231. The fact that judges are answerable to the President of the Republic is incompatible with the rule of law, as is the fact that the President and his ministers can exercise judicial functions such as ordering arrests. To restore these rights, the Government must: (a) guarantee the independence of the judiciary; (b) give the latter jurisdiction over the investigation of the improper acquisition of property by former dignitaries of the Mobutu Government; (c) investigate, with proper respect for the needs of due process, crimes committed during the former regime and during the current one, and ensure that the executive branch cooperates fully with the judicial branch in all necessary respects; and (d) adopt other measures to end impunity, especially in respect of war crimes and crimes against humanity, regardless of who is responsible.

(d) The armed forces and the police

232. The new Congolese armed forces should meet criteria of national representation and not be dominated by a particular ethnic group, region or political tendency. The army and the police should be national, in the sense of upholding Congolese values and serving the Congolese people. Former FAZ members should be integrated in conditions of dignity. They should be given mandatory training to develop a culture of respect for human rights. Care should be taken to ensure that children under the age of 15 do not take part in hostilities (Convention on the Rights of the Child, article 38).

233. The responsibilities of the police and of the various police and security services should be clearly defined so as to avoid the confusion of the past and present.

(e) Rehabilitation of kadogos

234. The implementation of plans to reintegrate into society the Alliance's child soldiers - the kadogos - and to put an end to their crimes is essential.

(f) Right to life and to physical integrity

235. Summary executions, enforced disappearances, looting and torture can and must be stopped, without any exception. These human rights violations must be completely eradicated.

(g) Freedom of expression and opinion

236. The Government must eliminate all measures that restrict these freedoms for journalists, newspaper-owners and all Congolese people who need or wish to be informed. No one should be persecuted for his or her ideas or for disseminating them.

(h) Non-governmental organizations

237. These are not enemies of the State, but its partners. They play an indispensable role and the State should see their criticism as a patriotic contribution to the creation of a society free of injustice. They should enjoy complete freedom in establishing themselves, electing their authorities, receiving contributions, determining their mandates and exercising their functions.

(i) Nationality

238. There is sufficient basis in international law for persons belonging to non-native ethnic groups to be recognized as Congolese nationals. However, in no circumstances does this authorize the granting of such recognition to persons who, by law, are foreigners.

(j) Status of women

239. The Government should implement a policy to guarantee an end to legal, cultural and educational discrimination against women.

(k) Conflict in Nord-Kivu

240. The Government has all the tools it needs to settle the ethnic conflicts in Kivu in conditions of justice and equality, without fomenting animosity or taking sides.

(l) Relations between the Government and the United Nations

241. The Government must significantly change its attitude towards the United Nations. The refusal to cooperate with the Special Rapporteur, with the joint mission of the Commission on Human Rights, and with the other rapporteurs of the Commission, the constant attacks against UNHCR - which is accused of supporting genocide, the blocking of humanitarian aid for the refugee camps, and the scandalous refoulement which took place in September

are compounded by the prevention of a member of the United Nations Administrative Tribunal, Balanda Mikuin Leliel, from performing his duty. All this takes place in a climate of hostility, marked by suspicions that there are enemies on all sides. The Government's charges of bias against UNHCR were dramatically disproved when the latter attempted to assist the Congolese Batutsi refugees who were forced to return to their country after the massacre in Mudende, but was unable to do so because the Government had expelled it from Goma (see paragraph 93).

2. To the United Nations and the international community

(a) The office of the High Commissioner for Human Rights in the Democratic Republic of the Congo and assistance to the Government

242. In his first report, the Rapporteur proposed that this office should be established, both to assist him in his work and to help the Government and civil society to progress towards democracy and to adopt measures to ensure respect for human rights. These aims are just as relevant now, for the new authorities that have emerged after the conflict.

243. However, the Special Rapporteur is concerned about the proper use of the resources intended to achieve these ends. It is a prerequisite for programmes of technical assistance in achieving human rights and democracy - which is nothing more than another human right - that the Government benefiting from them should be resolutely and effectively determined to build a genuinely democratic society that respects each of its members. Failing that, it runs the risk not only of losing those scarce resources, but also of undermining the confidence of civil society in the programmes, and what is worse, in the international community as a whole and in the United Nations in particular.

244. The first step in this direction has to be taken by the Government. If it adopts effective measures to implement the recommendations made in this report - or other recommendations that demonstrate a clear commitment to the cause of human rights, then it will be possible to begin a fruitful programme of technical assistance, as the Special Rapporteur earnestly hopes.

(b) Assistance to internally displaced persons and environmental rehabilitation

245. The Rapporteur strongly reiterates his 1997 recommendation (see document E/CN.4/1997/6, para. 233) that the international community - regional and international organizations, whether governmental or not, and States - should help to rehabilitate the environment of the Democratic Republic of the Congo, which has been damaged by the presence of more than 1 million Rwandan refugees, and to provide assistance to internally displaced persons.

(c) The mechanisms of the Commission on Human Rights

246. Since 1967, the Commission on Human Rights has been developing a range of mechanisms designed to study in depth situations that reveal a consistent pattern of human rights violations. These mechanisms are based on mandating experts to study the human rights situation in a country, the situation of a specific right, or a specific form of human rights violation. Experience has

demonstrated that the rapporteurs have shown objectivity in their reports, which are in essence a means of determining whether or not particular acts are in conformity with international declarations and covenants. It is true that as a rule the work of the rapporteurs is not acknowledged by the Governments concerned. In genera, however, it does receive recognition from the victims of human rights violations, non-governmental organizations and States that include respect for these rights in their policies and international relations. The experience of the author of this report, both as both a victim and as a defender of human rights in his own country, enables him to bear witness to the importance of these procedures, known as special procedures, in achieving greater freedoms.

247. In this regard, the 1993 World Conference on Human Rights in Vienna recommended "increased coordination in support of human rights and fundamental freedoms within the United Nations system" (paragraph 1); it proposed that "The Centre for Human Rights should be assured adequate means for the system of thematic and country rapporteurs" (paragraph 15), and underlined the importance of "preserving and strengthening" these mechanisms.

248. Completion of this task, which is under attack from some States, is still pending. If we adopt their approach, it may be possible to achieve some results in the short term. However, a long-term view requires that the principles adopted in Vienna should not be forgotten.

Notes

1/ Similary, the Mobutu regime refused to allow the Rapporteur to visit the country in July 1996 in order to investigate cases of violence in the ethnic conflicts in Nord-Kivu which were causing large numbers of victims and refugees, mainly among the Tutsi. See E/CN.4/1997/6/Add.1, paras. 8 and 9.

2/ According to certain sources, this report was requested by the Alliance, which had allegedly appointed its own members.

3/ Very similar accusations were directed at the Rapporteur by the Mobutu-Kengo Government. See E/CN.4/1996/66, para. 8, and E/CN.4/1997/6, paras. 18 and 19.

4/ Although he has consulted numerous lawyers and NGOs, the Rapporteur has been unable to track down Decree-Laws Nos. 1 and 2 or subsequent decree-laws.

5/ See paragraphs 161-174 (Right to a fair trial).

6/ Meeting of the Council of Ministers of 1 December.

7/ This is the name given to those who fought with Tshombe in the 1960s during the secession and subsequently participated in guerrilla activities during the 1970s. Although some might well have been Katangese gendarmes, most of them are their sons. They have lived mainly in Angola and supported AFDL's war effort.

8/ Wall Street Journal, 6 June 1997, quoted in the joint report of Human Rights Watch/International Federation of Human Rights.

9/ As stated in E/CN.4/1997/6, paragraphs 42-49.

10/ In point of fact, the announcement was made by the delegation of the European Union, which stated "We note with satisfaction the desire of the Congolese authorities to base their activities on democracy and human rights", adding that the President undertook to respect the electoral timetable under which free and democratic elections are to be held in 1999.

11/ Tutsi population displacements took place in all directions: Congolese Batutsi were displaced internally or sought refuge in Rwanda in 1996 and returned to recover their property; however, on being attacked by the Mai-Mai militias and their allies, they fled again.

12/ During a press interview on 8 November, President Kabila asked "Who has not been a Mobutu supporter in this country?", adding "we alone opposed this evil".

13/ Before this court was established, the Lubumbashi Centre for Human Rights and International Humanitarian Law had condemned the replacement of ordinary judges by military personnel without any experience in this city.

14/ According to the ANADDEM-F report, 1,031 houses and 3,737 vehicles have been confiscated as "improperly acquired property" from their owners suspected of being "former dignitaries".

15/ He was one of the fathers of Congolese independence.

16/ E/CN.4/1995/67, paras. 217-222 and 254; E/CN.4/1996/66, paras. 101-103 and 121; E/CN.4/1997/6, paras. 96-100 and 219.